United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7695

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P/S

United States Court of Appeals

For the Second Circuit.

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE individually,

Plaintiffs-Appellants,

against

ALBERT RAPELLA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS
FILED
FEB 13 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

(7996)

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PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

	Page
Docket Entries	1a
Complaint	3a
Answer	16a
Interrogatories	19a
Answers to Interrogatories	24a
Supplemental Answer to Interrogatories	44a
Notice of Motion to Dismiss Action	46a
Affidavit of Sabino J. Berardino in Support of Motion	48a
Exhibit A, Annexed to Affidavit of Sabino J. Berardino	51a
Exhibit B, Annexed to Affidavit of Sabino J. Berardino	125a
Affidavit of Dorothea Donohue in Opposition to Motion	200a
Exhibit 1, Annexed to Affidavit of Dorothea Donohue	211a
Exhibit 2, Annexed to Affidavit of Dorothea Donohue	213a
Exhibit 3, Annexed to Affidavit of Dorothea Donohue	214a
Exhibit 4, Annexed to Affidavit of Dorothea Donohue	215a

Page

Affidavit of William J. Corcoran in Opposition to Motion 216a

Exhibit A, Annexed to Affidavit of William J. Corcoran 231a

Exhibit B, Annexed to Affidavit of William J. Corcoran 240a

Exhibit C, Annexed to Affidavit of William J. Corcoran 241a

Exhibit D, Annexed to Affidavit of William J. Corcoran 242a

Exhibit E, Annexed to Affidavit of William J. Corcoran 243a

Order by Pollack, D. J. Appealed From . . . 248a

Notice of Appeal 249a

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

DAWN DONOHUE, an infant by Dorothea Donohue, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs-Appellants,

-against-

ALBERT RAPELLA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

Date	Proceedings
02-28-75	Filed complaint and issued summons.
04-07-75	Filed Defts demands a jury trial.
03-12-75	Filed Summons with Marshal's Return. Served/ Albert Rapella personally, 3/6/75
06-16-75	Filed Pltffs notice to take deposition of deft.
06-20-75	Filed Deft Cross to take deposition of pltffs.
06-30-75	Pre trial before Pollack, J.
07-02-75	Filed Stip. & Order that the examinations before trial scheduled for 6-26-75 is adjourned to 7-22-75. Pollack, J.

DOCKET ENTRIES

Date	Proceedings
08-15-75	Filed Stip & Order adjourning Exam. before trial from 7/22/75 to 8/19/75. Pollack, J.
08-28-75	Filed Pltff's Answers to interrogs by deft.
09-04-75	Pre trial before Pollack, J.
09-24-75	Filed Pltff's suppl. answer to interrogs by deft.
10-01-75	Pre trial before Pollack, J.
11-19-75	Filed Affdvt by Dorothea Donohue for pltff in opposition to motion to dismiss.
11-19-75	Filed Pltff's Memorandum of law.
11-24-75	Filed Deft. Affdvt & Notice of Motion re: order dismissing matter ret. 11/21/75.
11-24-75	Filed Memo End. on motion of same date. Parties were both resident in and citizens of New Jersey at time of commencement of this suit. Diversity jurisdiction is lacking and no federal question is involved. Complaint dismissed for lack of jurisdiction of this Court. Deft in open Court waived any defense of limitations and has consented to jurisdiction in New Jersey. So Ordered. Pollack, J(mn)
12-10-75	Filed Pltff's Notice of Appeal from final Memorandum decision & Order on 11/21/75 dismissing complaint on ground that Diversity jurisdiction is lacking, etc. (mailed copy to Garbarini, Scher, DeCicco & Cardino on 12/16/75)

COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

- x

JURISDICTION OF THE COURT IS BASED ON DIVERSITY OF CITIZENSHIP, TITLE 28, Section 1332 and Upon Federal Specification DD-G-451c and Standards of the Federal Housing Administration

FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE INFANT DAWN DONOHUE

The plaintiffs by their attorneys CORCORAN and BRADY, for their cause of action, upon information and belief allege as follows:

1. That at all the times hereinafter mentioned the infant plaintiff DAWN DONOHUE was at the age of 8 years having been born on March 8, 1965, and resided with her

parents, WILLIAM DONOHUE and DOROTHEA DONOHUE at 120 West 91st Street, in the Borough of Manhattan, City and State of New York.

2. That at all the times hereinafter mentioned the plaintiffs, including the father of the infant plaintiff, WILLIAM DONOHUE resided at the premises 120 West 91st Street in the Borough of Manhattan, City and State of New York, for a period of approximately seven (7) years.

3. That prior to the place of residence of the plaintiffs including the father of the infant plaintiff, WILLIAM DONOHUE, hereinbefore mentioned in Paragraph 2 of this complaint, the plaintiffs including the husband of the plaintiff DOROTHEA DONOHUE and father of the infant plaintiff DAWN DONOHUE, resided in a family unit at the premises 160 West 89th Street in the Borough of Manhattan, City and State of New York for a period of ten (10) years.

4. That upon information and belief, during the period the plaintiffs DOROTHEA DONOHUE and DAWN DONOHUE resided in the premises in the Borough of Manhattan, City of New York, the husband and father of the plaintiffs aforementioned was employed as a licensed operating engineer on construction work in the City of New York and during said

periods was a member of the International Union of Operating Engineers, Local 15, 15A, 15B, 15C, 15D AFL-CIO which has office and principal place of business at 265 West 14th Street in the Borough of Manhattan, City of New York.

5. That at all the times the plaintiffs resided in the Borough of Manhattan, City of New York as hereinbefore mentioned, the plaintiffs along with other members of their family attended the Roman Catholic Church known as St. Gregory located at 90th Street and Amsterdam Avenue in the Borough of Manhattan, City and State of New York; that Plaintiff DAWN DONOHUE attended Public School No. 84 located at 48 West 90th Street, Borough of Manhattan, City and State of New York where she completed the first and second grades at school; at about the same time, the sisters of the infant Plaintiff, namely, Patricia Donohue and Catherine Donohue attended St. Gregory's Parochial School at 90th Street and Amsterdam Avenue, New York City.

6. That at all the times hereinafter mentioned the husband and father of the plaintiffs respectively, namely WILLIAM DONOHUE worked steadily as a licensed operating engineer on heavy construction equipment in the City of New York and resided with the plaintiffs, together with other minor children of the family, as a family unit, at the

places of residence aforesaid and mentioned respectively in paragraphs 1, 2 and 3 of the complaint herein; that the Plaintiffs regard and intend their home to be located in the City of New York but are temporarily residing in New Jersey for medical and surgical attendance by the hospital and surgeon who initially operated upon and repaired the infant Plaintiff's injuries from the time of the onset of the same.

7. That upon information and belief, the Defendant was at all the times hereinafter mentioned the owner of the premises known as 319 McCabe Avenue, Bradley Beach, New Jersey.

8. Upon information and belief, the premises aforesaid located at 319 McCabe Avenue, Bradley Beach, New Jersey, was located near the New Jersey shore and used particularly as a summer residence for persons who rented the same from the defendant, especially Mrs. CATHERINE HORGAN, the married daughter of the Plaintiff DOROTHEA DONOHUE and her husband WILLIAM DONOHUE.

9. That at all the times hereinafter mentioned said CATHERINE HORGAN was and is the daughter of the Plaintiff DOROTHEA DONOHUE and sister of the infant Plaintiff DAWN DONOHUE

COMPLAINT

10. That at all the times hereinafter mentioned the premises owned by the defendant and located at 319 McCabe Avenue, Bradley Beach, New Jersey was a two-family frame dwelling.

11. That at all the times hereinafter mentioned one of the units at the premises 319 McCabe Avenue, Bradley Beach, New Jersey was rented by Mrs. CATHERINE HORGAN and her husband STEVE HORGAN with their family as a summer residence.

12. That at all the times hereinafter mentioned, the plaintiffs visited Mrs. CATHERINE HORGAN, daughter and sister respectively of the plaintiffs aforesaid during the month of July 1973.

13. Upon information and belief, at all the times hereinafter mentioned the defendant ALBERT RAPELLA resided at 100 Paulin Boulevard, Borough of Leonia, County of Bergen and State of New Jersey.

14. That at all the times hereinafter mentioned the defendant was in control of the premises 319 McCabe Avenue, Bradley Beach, New Jersey.

15. That at all the times hereinafter mentioned the defendant visited the premises 319 McCabe Avenue, Bradley

Beach, New Jersey on a regular basis to collect rents and for other purposes as a landlord and owner of the premises aforesaid.

16. That at all the times hereinafter mentioned the entrance door to the premises 319 McCabe Avenue, Bradley Beach, New Jersey was equipped with a large heavy glass attached on the outside of said entrance door, with a screen attached on the opposite or inside of said door.

17. That at all the times hereinafter mentioned the entrance door aforesaid was equipped with a door catch or lock.

18. That at all the times hereinafter mentioned the entrance door aforesaid with the heavy glass insert was difficult to open or close by reason of the defective, faulty catch lock which made it very difficult for persons entering or exiting from the premises by means of the front door aforesaid.

19. That at all the times hereinafter mentioned and for a long period of time before the defendant was informed of the non-working defective door catch which made it difficult and almost impossible to open in the normal manner and that information was given to the defendant and

to his agent by the tenant in the premises, and which information the defendant callously disregarded and took no action to repair, correct or remedy so as to make the opening and closing of said door possible in a safe and normal manner.

20. That upon information and belief, the glass insert in the said entrance door aforesaid, was of a heavy untempered non-safety glass, insecurely fitted into the opening of the said door.

21. That upon information and belief the defendand and/or his agent was informed on numerous occasions of the insecure manner in which the heavy, unprotected non-safety glass was inserted into the opening of the entrance door aforesaid, which information the defendant and/or his agent disregarded and ignored and failed to take such reasonable steps to correct the insecure, non-tempered, non-safety glass by replacing it with a proper standard and approved glass or in the alternative take such reasonable prudent, safe action as to secure the heavy glass in the insert of said entrance door from falling out of said door during the necessary use of said door to gain entrance to or exit from the premises aforesaid located at 319 McCabe Avenue, Bradley Beach.

COMPLAINT

22. That on the 29th day of July, 1973, at about 1 PM the heavy glass insert in the opening of the entrance door of the premises 319 McCabe Avenue, Bradley Beach, New Jersey fell out of the insert opening in said entrance door, with violence, causing the glass to break in large pieces, with dangerous cutting edges.

23. That the heavy non-tempered, non-safety glass insert in the entrance door fell with great violence, causing the glass to break and shatter into large pieces with sharp and dangerous edges.

24. That on July 29, 1973 at about 1 PM the heavy non-tempered, non-safety glass fell from the entrance door of the premises 319 McCabe Avenue, Bradley Beach, New Jersey, causing a large piece of said glass with sharp cutting edges to strike the infant plaintiff DAWN DONOHUE about the body and hands of said infrant plaintiff, causing her to suffer the severe painful and permanent injuries hereinafter described.

25. That the occurrence and accident aforesaid on July 29, 1973 at about 1 PM was caused solely by reason of the negligence of the defendant in the ownership, operation and control of the premises 319 McCabe Avenue, Bradley,

COMPLAINT

Beach, New Jersey, and more particularly with respect to the defective door at the entrance to said premises, in failing tocorrect, remedy or replace the defective door lock or catch which made it difficult to open said door when entering or exiting from the premises, although the defendant and/or his agents was duly informed of said defect on several occasions; the defendant was negligent in causing and permitting the glass in said entrance door to be in a defective and inferior quality with flaws therein, insecurely attached to the frame of said door which caused the said heavy glass to be insecure and not properly held or secured in a safe manner to the insert frame of said door so as to prevent its falling out with great force and violence during the normal use of said door in the opening and closing of the same; the defendant was negligent in failing to use glass of a quality that met the Federal Standards and specifications DD-G-451c and ANSI Z97.1-1972 and in conformity with FHA and AAMA standards as well as the safety regulations of safety glass as required under the laws of the State of New Jersey and the defendant was negligent in other respects; that the plaintiffs did not contribute in any way to the accident and occurrence aforesaid which was caused solely by the negligence of the defendant.

COMPLAINT

26. That the said accident and occurrence resulted in a violent and forceful breakage and shattering of glass in large sections with sharp cutting edges which fell about the body and hands of the infant plaintiff DAWN DONOHUE who was standing on the porch of the premises 319 McCabe Avenue, Bradley Beach, New Jersey, causing said infant plaintiff to suffer severe and deep lacerations of the right hand and wrist resulting in a severe and deep laceration of her dominant left wrist; the laceration extended through the ulnar nerve, through one-half of the median nerve and there were partial or complete transections of the long flexors of the index, middle, ring and little fingers; infant plaintiff was maintained in a plaster cast of the left hand and wrist for approximately one month with loss of good sensation to all of the fingers and which has caused the infant plaintiff to develop a "claw"-like hand with inability to close fingers and make a fist; the infant plaintiff is suffering from lack of function of the ulnar intrinsic muscles and was otherwise injured about the head, body and limbs and was confined to a hospital and to her home for a long period of time and was obliged to and did necessarily employ medical aid and attendance and was prevented from attending to her usual duties and attendance at school and said infant plaintiff developed an

emotional and psychiatric disturbance by reason of her injury and inability to perform her work in school and home, particularly as the butt of ridicule of her classmates who described the infant plaintiff as being possessed of a "claw" hand, all to her damage in the sum of THREE HUNDRED AND FIFTY THOUSAND AND 00/100 ($350,000.00) DOLLARS.

FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF
DOROTHEA DONOHUE

27. The plaintiff DOROTHEA DONOHUE repeats and reiterates each and every allegations in paragraphs of the complaint marked 1 through 26, as if at length set forth herein.

28. The plaintiff DOROTHEA DONOHUE was and is the mother and natural guardian of the infant plaintiff DAWN DONOHUE and as such was entitled to the services of her child along with the love, affection and companionship of said child; that following the occurrence described in the first cause of action, particularly in paragraphs 26 and 27, the infant plaintiff became depressed and emotionally upset; that said infant child would wake up in the nighttime, screaming and crying to the detriment and emotional and mental harm

and injury of the plaintiff DOROTHEA DONOHUE; that the plaintiff DOROTHEA DONOHUE was required to remain awake at night with the infant plaintiff with the resulting loss of sleep and rest and said plaintiff DOROTHEA DONOHUE by reason thereof lost sleep and weight and became emotionally taut and sorrowful in grieving over the permanent loss of use of the left hand and wrist of said infant plaintiff, DAWN DONOHUE, and was required to feed and wash and dress said infant plaintiff and accompany her to the classroom where she would be ridiculed by her classmates who made fun and a joke of her "claw"-like hand and wrist; that the plaintiff DOROTHEA DONOHUE suffered great grievance and inconvenience in viewing and contemplating the severe injuries and disfigurement of her daughter's hand and wrist and the plaintiff DOROTHEA DONOHUE was otherwise injured mentally and emotionally in her body and mind; that in consequence of the negligence and carelessness of the defendant, the infant Plaintiff was severely and permanently injured and confined to a hospital and to her bed and home for a long period of time and the Plaintiff, DOROTHEA DONOHUE, paid or became obligated to pay large sums of money for the care and treatment of her infant daughter by a hospital and

surgeons and doctors for operative repair and treatment of the infant Plaintiff for traumatic physical and psychiatric damage and injury to the body and mind of said infant Plaintiff; that by reason thereof the Plaintiff DOROTHEA DONOHUE has been damaged in the sum of $250,000.00.

WHEREFORE, the Plaintiff DAWN DONOHUE, by her mother and natural guardian, demands judgment against the defendant in the sum of THREE HUNDRED AND FIFTY THOUSAND AND 00/100 ($350,000.00) DOLLARS in the First Cause of Action; and the Plaintiff DOROTHEA DONOHUE demands judgment in the sum of TWO HUNDRED AND FIFTY and 00/100 ($250,000.00) DOLLARS, in the Second Cause of Action, together with the costs and disbursements of this action.

Yours, etc.

CORCORAN AND BRADY
Attorney for Plaintiffs
11 Park Place
New York, N. Y. 10007
Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

ANSWER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

Index No. 75CIV 1023

DEFENDANT DEMANDS A JURY TRIAL

Defendant, ALBERT RAPELLA, by GARBARINI, SCHER, DE CICCO & BERARDINO, his attorneys, answering the complaint of the plaintiffs herein, respectfully alleges:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs designated "1", "2", "3", "4", "5", "6", "9", "11" and "12" of the complaint.

SECOND: Denies each and every allegation set forth in paragraph "8" except to admit that the premises were located near the New Jersey Shore.

THIRD: Denies each and every allegation set forth in paragraphs "14" and "15" and beg leave to refer questions of law to the honorable court.

FOURTH: Denies each and every allegation set forth in paragraphs designated "16", "18", "19", "20", "21", "22", "23", "24", "25" and "26" of the complaint.

AS TO THE SECOND CAUSE OF ACTION

FIFTH: Repeats and reiterates each and every admission and denial to the allegations set forth in paragraphs designated "1" through "26" with the same force and effect as if herein set

forth at length in answer to the allegations of paragraph "27" of the complaint.

SIXTH: Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph designated "28" of the complaint.

AS AND FOR A FURTHER ANSWER TO THE COMPLAINT AND FOR A FIRST, SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE CAUSES OF ACTION SET FORTH IN THE PLAINTIFFS' COMPLAINT, DEFENDANT, ALBERT RAPELLA, UPON INFORMATION AND BELIEF ALLEGES:

SEVENTH: That the Court did not acquire and does not have jurisdiction over the person of the defendant, ALBERT RAPELLA.

AS AND FOR A FURTHER ANSWER TO THE COMPLAINT AND FOR A SECOND, SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE CAUSES OF ACTION SET FORTH IN THE PLAINTIFFS' COMPLAINT, DEFENDANT, ALBERT RAPELLA, UPON INFORMATION AND BELIEF ALLEGES:

EIGHTH: This court has no jurisdiction over the cause because all of the parties are citizens and residents of the State of New Jersey and there is no diversity of citizenship as required under Title 28, Section 1332 of the United States Code.

AS AND FOR A FURTHER ANSWER TO THE COMPLAINT AND FOR A THIRD, SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE CAUSES OF ACTION SET FORTH IN THE PLAINTIFFS' COMPLAINT, DEFENDANT, ALBERT RAPELLA, UPON INFORMATION AND BELIEF ALLEGES:

NINTH: That the second cause of action fails to state a cause for which relief can be granted insofar as it seeks damages for emotional and psychic injuries sustained by DOROTHEA DONOHUE.

WHEREFORE, defendant, ALBERT RAPELLA, demands judgment

dismissing the complaint herein, together with the costs and disbursements of the action.

Yours, etc.

GARBARINI, SCHER, DE CICCO & BERARDINO
Attorneys for Defendant
500 Fifth Avenue
New York, N. Y. 10036
Tel. (212) 695-6622

BY _____
CHAS. J. GARBARINI
A Member of the Firm

INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Index No. 75CIV 1023

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

----------X

INTERROGATORIES PROPOUNDED BY DEFENDANT, ALBERT RAPELLA, FOR REPLY BY PLAINTIFFS

Defendant, in the above entitled action, hereby makes demand that the plaintiffs answer the following Interrogatories under oath. These Interrogatories shall be deemed continuing, so as to require supplemental answers if affiant, or any one on their behalf obtains further information between the time of the answers are served and the time of trial. If more than one plaintiff is named, please answer separately for each plaintiff. If a minor plaintiff is involved, the following Interrogatories, were applicable, are to be answered with reference of the claim of said minor.

1. The age, address and social security number of the plaintiffs.

2. The date and time of the occurrence.

3. The location of the occurrence set forth in the complaint with sufficient detail to enable the defendant to identify the same.

4. The acts or omissions constituting the negligence claimed on the part of the defendant.

5. State each and every injury claimed to have been sustained with duration thereof, and alleging specifically which

INTERROGATORIES

are claimed to be permanent and in what respect they are claimed to be permanent.

6. State how long plaintiff, DAWN DONOHUE, was confined to bed giving the dates thereof.

7. State how long the plaintiff, DAWN DONOHUE, was confined to house with dates thereof.

8. State howlong the plaintiff, DAWN DONOHUE, was confined to a hospital, with the dates of confinement and the names of the hospitals.

9. Set forth the names and address of all attending physicians.

10. State how long the plaintiff, DAWN DONOHUE, will claim to be disabled from her usual occupation.

11. State plaintiff's employer at the time of the occurrence with address thereof, position held by the plaintiff, and the rate of earnings; or if self-employed name and address under which plaintiff is doing business. If the plaintiff is a student please set forth the name and address of the school attended, the grade which the plaintiff is in and whether or not it will be claimed that any time was lost from school as a result of this occurrence.

12. State the amount of doctors' bills claimed to have been sustained by the plaintiffs.

13. State the amount of hospital bills.

14. a) State the amount of nursing services.
b) State the amount of medications and medical supplies.
c) State the amount of lost earnings.
d) State the amount of household help expense with the name and address of the recipients thereof.

15. Set forth the nature of and the location of any dangerous or defective condition which the plaintiffs will claim caused or added to the occurrence.

16. If notice is prerequisite, state whether actual or constructive notice is claimed.

17. If actual notice is claimed, state time, place and the name of the person to whom such notice was given.

18. If constructive notice is claimed, state how long the condition existed.

19. Set forth the sections of the statutes, ordinances, rules and regulations claimed to have been violated by the defendant.

INTERROGATORIES

20. Set forth every additional item of damage alleged to have been sustained by the plaintiffs.

21. If property damage is claimed, set forth all details concerning said property damage.

22. State the exact location where it will be claimed that the plaintiff was located at the time she was allegedly struck by glass or a part thereof.

23. If it is claimed that said door as alleged in the complaint was not properly secured set forth in what respect the plaintiff will claim said door was not in fact properly secured and whether it created a dangerous or defective condition.

24. If it is claimed that negligent repairs were made, state when, where and by whom on behalf of the defendant they were made, and in what respect such repairs were negligent.

25. If it is claimed that the installation of said door was negligent, state when the installation was made, where and by whom on behalf of the defendant it was made and in what respect such installation was negligent.

26. If the plaintiffs allege that there was in fact a dangerous or defective condition then set forth the alleged dangerous and defective condition which the plaintiffs will claim existed at said premises.

27. Set forth who on behalf of the defendant herein allegedly caused the aforesaid defective and dangerous condition to exist, the date this was caused, and in what manner said condition was caused and the location thereof with respect to the premises.

28. If the plaintiffs are claiming a nuisance then set forth the condition or conditions allegedly constituting a nuisance, the nature of such condition, and the length of time that it was in existence prior to the date of the alleged accident.

29. If it is claimed that the door was defective state how, and in what manner the plaintiffs will claim that said door was allegedly defective.

30. If it is claimed that the glass contained in the door was illegal set forth how and in what manner the plaintiffs will claim that said glass was "illegal".

31. If it is claimed that the door had inadequate support and retainers for glass contained in said door, set forth how and in what manner the plaintiffs will claim that said support was allegedly inadequate.

INTERROGATORIES

32. Set forth specifically how and in what manner the plaintiffs will claim that the occurrence took place and the glass allegedly fell and shattered causing the alleged injuries herein.

33. State if it will be claimed that the infant and her parents were tenants of 319 McCabe Avenue, Bradley Beach, New Jersey.

34. If the infant claimant and her parents were visiting said premises state:

(a) Whom they were visiting;
(b) When they arrived;
(c) How long they were at the premises prior to the alleged occurrence.

35. State the names and addresses of all known witnesses to the alleged occurrence.

36. If any portions of the door allegedly involved in the occurrence or any of its mechanisms were retained by the plaintiffs or their agents state:

(a) Who has present possession of the door or any of its mechanisms;
(b) Whether any expert evaluation was made of the door or its mechanisms;
(c) If any evaluations or reports were made provide the defendant with copies of same.

37. State the names of all brothers and sisters of the infant plaintiff residing with the infant plaintiff and the names and addresses of the schools they attended at the time the summons and complaint herein were alleged served.

38. State all the residences either owned or rented by the infant plaintiff or her parents at the time of the commencement of this action.

39. State if the parents of the infant plaintiff are registered to vote and if so, state where they are registered to vote.

40. State if the parents of the infant plaintiff were employed at the commencement of this action, and if so, state where.

41. State if the parents of the infant plaintiff are registered to vote and if so, state the voting address.

42. If the parents of the infant plaintiff pay property taxes, state where these taxes are paid.

43. If the parents of the infant plaintiff owned any

motor vehicles at the time of the commencement of this action, state where they were registered.

Dated: New York, April 4th, 1975.

Yours, etc.

GARBARINI, SCHER, DE RICCO & BERARDINO
Attorneys for Defendant
500 Fifth Avenue
New York, N. Y. 10036
(212) 695-6622

By _____
CHAS. J. GARBARINI
A Member of the Firm

TO: CORCORAN AND BRADY, ESQS.
Attorneys for Plaintiffs
11 Park Place
New York, N. Y. 10007

ANSWERS TO INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant

----------X

75 CIV 1023 (M.P.)

ANSWERS TO INTERROGATORIES PROPOUNDED BY DEFENDANT

The Plaintiffs, by CORCORAN AND BRADY, their Attorneys, answering the Interrogatories Propounded by the Defendant, state as follows:

1. The Plaintiff DAWN DONOHUE was of the age of eight years at the time of the occurrence, having been born on March 8, 1965.

The Plaintiff DOROTHEA DONOHUE, her Mother, is now of the age of 48 years, having been born on August 4, 1927. Her Social Security Number is 008-14-5654.

The address at the time of the occurrence was 120 West 91st Street, New York, New York; Their temporary address at the present time is 200 Third Avenue, Belmar, New Jersey 07719.

2. The date and time of occurrence is July 29, 1973 between 2 PM and 2:30 P.M.

ANSWERS TO INTERROGATORIES

3. The location of the occurrence was at the entrance door leading to the porch of the premises 319 McCabe Avenue, Bradley Beach, New Jersey.

4. The acts or omissions constituting the negligence claimed on the part of the Defendant are as follows: In causing and permitting a large pane of glass to be and remain in the entrance door leading to the porch of the premises 319 McCabe Avenue, Bradley, New Jersey, in a loose, insecure, dangerous and defective manner; in causing and permitting the knob and catch device of the main door to become loose and defective making it difficult, if not impossible, to turn the knob to retract the lock portion so as to permit the opening of the door in a normal, easy manner; the Defendant was negligent in failing to repair, replace or correct the defective "tricky" catch of the handle of the main door leading out to the porch notwithstanding the frequent complaints made to the Defendant and/or his agent over a long period of time prior to the occurrence on July 29, 1973; the Defendant was negligent in failing to insert non-shatterable, safety glass in the door but, on the other hand, caused and permitted the said door to be equipped with a large pane of glass which broke and splintered into large dangerous segments which acted like a sharp knife when one of such segments came in violent contact with the left hand and wrist of the infant Plaintiff, DAWN DONOHUE.

ANSWERS TO INTERROGATORIES

5. The infant Plaintiff DAWN DONOHUE, who at the time of the occurrence was 8 years of age, sustained a severe and deep laceration of her dominant left wrist; said laceration extended through the ulnar nerve through one-half of the median nerve and there were partial or complete transections of the long flexors of the index, middle, ring and little fingers; at the time of surgery it was found that the ulnar half of the median nerve was transected; the entire ulnar nerve was transected; the flexor digitorum superficialis tendons were totally transected except for the tendon to the index finger which was partially transected; the flexor digitorum profundus tendons to the middle ring and little fingers were completely transected; there was extensive hematoma formation throughout the sheath. As a result of the partial or complete transections of the injured tendons and nerves, the infant Plaintiff has been unable to close her left hand in a normal manner; for a long period of time the infant Plaintiff suffered the inability to close the fingers of her left hand with the result that the left hand of the infant Plaintiff took on the appearance of a "claw" hand; the infant Plaintiff suffered the loss of sensation in all fingers of the left hand with severe restriction of the flexor function of the fingers;

the infant Plaintiff suffered lack of function of the ulnar intrinsic muscles; infant Plaintiff has suffered a status post deep laceration to the dominant left wrist with lacerations of median and ulnar nerves and long flexor tendons of the index, middle, ring and little fingers.

The infant Plaintiff underwent extensive surgical repair of all of the injured tendons and nerves at the Jersey Shore Medical Center, Neptune, New Jersey in an operation of 2-1/2 hours duration under anaesthesia; infant Plaintiff was maintained in a plaster cast for one month and the said occurrence has left the infant Plaintiff with a severe elongated scarring of the dominant left wrist and left hand; the infant Plaintiff suffered an irregular wound and laceration of the left wrist extending over 6 cm in length; the infant Plaintiff suffers a weakness of the thumb in adduction and extension and in the figers in adduction; the infant Plaintiff has a weaker hand grip on the left hand as compared with the right; infant Plaintiff also suffers limitation of motion at the wrist as well as weakness of the muscles innervated chiefly by the ulnar nerve; the Plaintiff suffers from a tendon mass in the proximal border of the scar with underlying neuroma formation and acute tender area which may require survical removal if the neuroma formation persists.

The Plaintiff will claim that all of the

above described injuries are permanent with slight improvement in the use of the left hand; but transection of all of the nerves and tendons above described continue to the present time. The infant Plaintiff suffers a malfunction of the fingers of the land hand and movement of the left wrist; the infant Plaintiff continues to have a weaker hand grip on the left as compared with the right; the underlying neuroma formation in the proximal border of the scar persists to the present time accompanied by acute tenderness which may have to be surgically removed.

The infant Plaintiff suffered psychological and emotional trauma by reason of the severe laceration of the dominant left wrist and hand particularly the damage to the tendons and nerves which prevented the infant Plaintiff from closing the fingers of her left hand so that the same remained in a "claw" position with accompaning elongated scar; the infant Plaintiff became the butt of ridicule from her classmates who openly brought to the attention of the infant Plaintiff that she had a "claw" hand; the infant Plaintiff suffered further mental, psychological and emotional trauma when the school to which she returned attempted to have the infant Plaintiff write with her right hand depite the fact that she had initially and always used the left hand for writing; the inability of the infant Plaintiff to adjust to the change in writing from the left hand to the right hand

caused her to become confused and frustrated; to escape from such predicaments the infant child declined to attend school and was found walking about the town alone and unescorted until she was found by a police officer; the infant Plaintiff continued to suffer in her school work and did poorly in her subjects and was actually held back and had to repeat the third grade; infant plaintiff was required to eliminate gymnasium or any activity connected with the same including acrobatic dancing; the discouragement engendered by the severe ugly scars of the dominant left wrist and hand plus the ridicule to which the infant plaintiff was subjected to by her classmates because of her "claw" hand, the infant Plaintiff cried constantly during the greater part of her waking hours as well as during the night which caused the Plaintiff, DOROTHEA DONOHUE, the Mother of the infant Plaintiff to remain up with the child in attempts t relieve her of the constant crying, discouragement and dispondency to which the child had fallen by reason of the severe traumas caused by the occurrence of July 29, 1973; the infant Plaintiff remains quite tense; the infant Plaintiff will require socialogical treatment and special tutoring to overcome the obstacles and frustrations caused by the severe trauma and resulting mal-function of the left hand and wrist.

ANSWERS TO INTERROGATORIES

6. Infant Plaintiff DAWN DONOHUE was confined to bed, following discharge from the hospital, for approximately one week.

7. Infant Plaintiff DAWN DONOHUE was confined to the house and porch for a period of one week; thereafter infant Plaintiff was permitted to take short walks in the company of her Mother or sister during which she complained of weakness, dizziness and fatigue.

8. Infant Plaintiff was confined to the Jersey Shore Medical Center, Fitkin Hospital, 1945 Corlies Avenue, Neptune, N. J. from July 29, 1973 to July 31, 1973.

9. The attending physicians are:

(a) Dr. Joseph N. Jasaitis
206 Crescent Parkway
Sea Girt, New Jersey 08750
Specialist in plastic and reconstructive surgery and cosmetic and surgery of the hand.

(b) Dr. Reda Zakhary
251 West Sylvania Ave.
Neptune, N. J. 07753
Anesthesia management

ANSWERS TO INTERROGATORIES

10. Infant Plaintiff DAWN DONOHUE will claim to be disabled from the full use of her left hand and fingers during the balance of her natural life.

11. Infant Plaintiff was eight years of age at the time of the occurrence; Plaintiff DOROTHEA DONOHUE is a housewife and homemaker and was not otherwise employed; it will be claimed that the injuries suffered by the infant Plaintiff caused her school work to suffer and do poorly by reason of which she had to repeat the third grade. Infant Plaintiff at the time of her visit to her sister at 319 McCabe Avenue, Bradley Beach, New Jersey had completed second grade at Public School 84, 48 West 90th Street, New York, New York and was to enter the third grade; following the accident and occurrence of July 29, 1973, the infant Plaintiff remained in New Jersey to be in close proximity to Dr.Joseph E. Jasaitis, 206 Crescent Parkway, Sea Girt, New Jersey, who is the plastic and neurosurgeon who operated upon the left hand and wrist of the infant Plaintiff, DAWN DONOHUE, and for follow-up treatment and care by said Doctor, as treatment continued and still continues in the office of Dr. Jasaitis; infant Plaintiff transferred to St. Rose Parochial School in Belmar, New Jersey, despite the fact that the parents of the infant Plaintiff continued their abode at the apartment of the New York City Housing Authority known as the Stephen Wise Towers, 124 West 91st Street, New York, NY, Apt. 19J until after

ANSWERS TO INTERROGATORIES

November 14, 1973.

12. Doctors bills are as follows:

Dr. Joseph E. Jasaitis, 20[illegible] Crescent Parkway, Sea Girt, N. J. - $800.00 of which the sum of $245.50 remains unpaid;

Dr. Reda Zakhary, 251 West Sylvania Ave., Neptune, N. J. - $120.00.

13. The bill of the Jersey Shore Medical Center, Pitkin Hospital, 1945 Corlies Ave., Neptune, N. J. - $576.75

14. (a) Nursing services included in hospital bill.

(b) Amount of medications and medical supplies are of the sum of $100 approximately.

(c) No claim for lost earnings.

(d) Although household help was required, the Plaintiffs are unable to pay for same.

15. Nature and location of dangerous or defective condition is the defective, "tricky" catch of the handle and lock attached to the main door leading to the porch; said lock would"catch" when attempts were made to open the door causing persons properly on the premises to have difficulty in opening the door; the defective catch or improper operation of the door knob and handle presented the door from being opened until

such time as the catch would retract, which occurred at variable times; the main entrance door was equipped with large glass pane which was loose and insecurely held in door; large glass pane was of annealed glass which when it fell from its opening or enclosure broke into large sections with pointed and sharp cutting edges, some sections of which struck the infant Plaintiff causing the deep severe lacerations and severances of the tendons and nerves of the fingers of the left hand and wrist; Defendant was negligent in failing to equip the door with tempered or heat treated glass, which, although breakable, would have a safe break pattern of small particles or cubes approximately the size of the thickness of the glass and thus minimize the chances of severe injury.

16. Actual and constructive notice is claimed.

17. Actual notice was given to the Defendant and/or his agent GARRA GRANT AGENCY, 428 Main Street, Asbury, New Jersey, of the defective loose and unsafe condition of the glass pane of the door and of the improper functioning of the lock, knob and door handle whenever the Defendant or his collection agent, Mr. Tuccini or Mr. Endready visited the premises at 319 McCabe Avenue, Bradley Beach, New Jersey, for the collection of monthly rents; Defendant and/or its agents aforesaid were informed of the bad spring on the door which would cause the

door to close with great force and that the door catch was defective; despite complaints made to Mr. Endready as far back as November 1972, the latter assured the tenant that "we will take care of it, don't worry", he kept putting it off and nothing was done; the glass pane in the door was either too big or too small for it never was secure; the complaints aforesaid was made at various times, commencing in November 1972 to persons aforementioned when they came to collect rents on a monthly basis.

18. Constructive notice is claimed on the basis that the condition complained existed for at least a period of approximately nine months or from November 1972.

19. The Defendant violated Section 7 of the Regulations of the Commissioner of Community Affairs promulgated pursuant to New Jersey Public Laws, Chapter 369.

ANSWERS TO INTERROGATORIES

20. The Plaintiff DOROTHEA DONOHUE will claim that she has lost the services of her daughter, the infant Plaintiff, DAWN DONOHUE, by reason of the injuries suffered by said infant Plaintiff; Plaintiff DOROTHEA DONOHUE will claim that in attempts to act as a nurse and therapist for her infant daughter, she has been subjected to long hours of watching the infant plaintiff, who would cry continuously; would wake up with nightmares while asleep and thus cause the Plaintiff DOROTHEA DONOHUE to lose sleep, become irritable and despondent over the infant Plaintiff's condition and the permanency which condition which the infant Plaintiff will have to endure, particularly the lack of normal movement of the fingers and wrist of the left hand with ugly irregular scar and formation underneath on the dominant portion of the left wrist and hand; the further damage which Plaintiff DOROTHEA DONOHUE will claim is the moneys she will have to expend in follow-up surgical repair and therapy which the infant Plaintiff will require and which sums of moneys are not at this time knowledgeable to said Plaintiff.

21. Not applicable

22. Infant Plaintiff was standing on the porch of the premises, 319 McCabe Avenue, Bradley Beach, New Jersey near the door from which the pane of glass fell and broke, striking the infant Plaintiff about the left hand and wrist.

ANSWERS TO INTERROGATORIES

23. See Answers to Interrogatories Numbered 4, 15, 17 and 18.

24. Plaintiffs do not have knowledge of repairs made.

25. Plaintiffs claim that installation of glass pane in door was loose and defective; claim is also made that lock and handle of door mal-functioned causing the lock or catch to stick; this condition existed over a long period of time, resulting in the lock becoming "tricky" in that it was not known when the catch would work properly or not.

26. See answer above to Interrogatory numbered 25.

27. The defective and dangerous condition was caused to exist by the Defendant or the agent, employee, or contractor engaged by the defendant to install the door in the premises, and more particularly, the glass pane in said door which was insecurely held and fastened; the defective and dangerous condition pertaining to the pane of glass existed for many months prior to the occurrence of July 29, 1973 and may have existed from the time the said door and glass pane was purchased by the defendant, which date is unknown to the plaintiffs; the defective, dangerous, loose, unsecured condition of the door and glass pane insert was further aggravated by the mal-functioning of the handle, knob, lock or catch on said door which would function irregularly in such a manner that the door would

remain locked or "caught" when attempts at ingress or egress were made.

28. The length of time of many months during which the door mal-functioned and the failure of the defendant to remedy or correct the same after promising to do so and the uncertainty as to when the "catch" or lock on the door would operate properly and safely, thus hampering ready and regular ingress and egress resulted in the conditions complained of and thereby took on the character of a nuisance in law.

29. See answer to Interrogatory numbered 28.

30. The glass pane installed in the door was made of annealed glass, which glass when jarred or broken splits and breaks into large sections or splinters with sharp points and cutting edges; whereas, glass that is tempered will, when broken or jarred, break into a safe break pattern of small particles or cubes approximately the thickness of the glass and thereby minimize the chances of severe injury; to the extent that the glass pane in the door in question broke into larger pointed sections with sharp cutting edges, after a long history of an insecure and loose glass with a mal-functioning catch or lock, on the door, the plaintiffs will claim that the glass contained in the door was improper and illegal. The tempered glass will deflect more before failure than annealed glass.

ANSWERS TO INTERROGATORIES

31. The door had inadequate supports and retainers for the glass pane in that said supports and retainers failed to secure the glass in a safe and fixed position by reason of their inefficiency and also by reason that some supports and retainers were missing.

32. The Plaintiffs will claim that the occurrence took place when the sister of the infant Plaintiff, DAWN DONOHUE, while inside the house, was attempting to open the door on to the porch, the pane of glass fell from its supports and retainers and broke into large sections, one or more of which secionts of glass struck the infant Plaintiff, DAWN DONOHUE, who was standing outside on the porch in close proximity to the door, on the left hand and wrist.

33. The Plaintiffs will claim that they were visiting the premises, 319 McCabe Avenue, Bradley Beach, New Jersey, where the married daughter of the Plaintiff DOROTHEA DONOHUE, and the sister of the infant Plaintiff, DAWN DONOHUE resided with her husband.

34. The infant Plaintiff and her mother, the Plaintiff, DOROTHEA DONOHUE were:

(a) Visiting MRS. KATHERINE HORGAN and her husband JOHN HORGAN;

(b) Arrived on the morning of July 29, 1973;

(c) Were at the premises several hours prior to the occurrence.

ANSWERS TO INTERROGATORIES

35. The witness to the occurrence is PATRICIA DONOHUE temporarily residing at 327 16th Avenue, Belmar, New Jersey.

36. No portions of the door or any of its mechanisms were retained by plaintiffs or their agents.

37. The names of the brothers and sisters residing with infant Plaintiff at the time of the occurrence on July 29, 1973 and the schools they attended are as follows:

(a) PATRICIA DONOHUE - attended St. Gregory Parochial School at West 90th Street and Amsterdam Avenue, Manhattan, New York, N.Y.

(b) STEPHEN DONOHUE - graduated from St. Gregory Parochial School, West 90th Street and Amsterdam Avenue, Manhattan, New York, N.Y. and after attending Manhattan Trade School in Yowkville, New York City, joined the United Stated Marines to which he was attached when infant Plaintiff DAWN DONOHUE suffered the occurrence of July 29, 1973 and was technically and legally residing with the infant Plaintiff as of July 29, 1973.

(c) MRS. KATHERINE HORGAN, sister of infant Plaintiff DAWN DONOHUE resided with husband JOHN HORGAN at time of occurrence on July 29, 1973; previously attended St. Gregory Parochial School at West 90th Street and Amsterdam Avenue, New York, NY.

(d) Infant Plaintiff attended P.S. 84, 91st St. and Columbus Avenue, Borough of Manhattan, City of New York.

Following the accident to the infant Plaintiff DAWN DONOHUE on July 29, 1973, the Plaintiff DOROTHEA DONOHUE returned to her home at 120 West 91st Street, New York, NewYork

where she resided with her husband, WILLIAM DONOHUE; husband and father of Plaintiffs continued to be employed as an operating engineer on a construction job for Walsh Construction Company and Perini Construction Co. in the Borough of Queens, New York City; Plaintiffs continued to remain as tenants of the Stephen Wise Towers located at 120 West 91st Street in the Borough of Manhattan until November 1973 in Apartment 19J and for which occupancy the New York City Housing Authority, as owner, billed the father of the infant plaintiff as rent up to and including November 14, 1973 the sum of $384.22. Plaintiffs resided at 160 West 89th Street, New York, N. Y. for ten years prior to moving to 120 West 91st Street, New York City.

In order to have the infant plaintiff available for follow-up treatment by the attending surgeon, Dr. Joseph E. Jasaitis, specialist in plastic and reconstructive surgery, cosmetic and surgery of the hand with three offices in New Jersey, viz: 206 Crescent Parkway, Sea Girt, New Jersey, 2100 Corlies Avenue, Neptune City, N.J., and 232 Broad Street, Red Bank, N.J., and to take advantage of the special talents and skill of this noted surgeon in cosmetic and reconstructive surgery of the hand, and more particularly of the extraordinary interest shown by Dr. Jasaitis, who originally performed the surgical repair to the massive damage suffered by the infant Plaintiff, the Plaintiffs temporarily took up stay in New Jersey at 327 16th Avenue, Belmar, New Jersey.

ANSWERS TO INTERROGATORIES

At the time of service of the Summons and Complaint by the United States Marshall on the Defendant ALBERT RAPELLA on March 6, 1975, the following resided on a temporary basis with the intent to return to New York City with the infant Plaintiff and the school attended is as follows:

Sister PATRICIA DONOHUE resided at 327 16th Avenue, Belmar, New Jersey and attended St. Rose Parochia School, Belmar, New Jersey.

38. At the time of the commencement of the action the Mother of the Infant Plaintiff rented premises at 327 16th Avenue, Belmar, New Jersey, on a temporary basis to enable infant Plaintiff DAWN DONOHUE to be available for attending surgeon Dr. Jasaitis, during the critical period of rehabilitation of the hand and during the period in which infant Plaintiff was undergoing severe emotional and psychiatrt trauma due to the conditions set forth in Answer to Interrogatory Numbered 5 and 11.

39. The parents of infant Plaintiff were last registered to vote in New York City; they have never registered to vote in the State of New Jersey.

40. The parents of the infant Plaintiff were not employed at the time of the commencement of the Action.

41. See Anser to Interrogatory Numbered 39.

42. Property taxes are not paid by the parents of the infant Plaintiff.

ANSWERS TO INTERROGATORIES

43. Parents of the infant Plaintiff did not own a motor vehicle at the time of the commencement of the action.

Dated: New York, N. Y.
August 22, 1975

CORCORAN AND BRADY
Attorneys for Plaintiffs
11 Park Place
New York, New York 10007
Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

TO: GARBARINI, SCHER, DE CICCO
& BERARDINO, ESQS.
Attorneys for Defendant
500 Fifth Avenue
New York, New York 10036

ANSWERS TO INTERROGATORIES

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DOROTHEA DONOHUE, being duly sworn, deposes and says: Deponent is one of the Plaintiffs in the within action; Deponent has read the foregoing Answer to the Interrogatories and knows the contents thereof; the same is true to Deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters Deponent believes it to be true.

Dorothea Donohue
DOROTHEA DONOHUE

Sworn to before me this
22nd day of August 1975

William J. Corcoran
NOTARY PUBLIC

WILLIAM J. CORCORAN
Notary Public, State of New York
No. 31-5817065
Qualified in New York County
Commission Expires March 30, 1976

SUPPLEMENTAL ANSWER TO INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

- against -

ALBERT RAPELLA,

Defendant.

Index No.: 75 CIV 1023

SUPPLEMENTAL ANSWER TO INTERROGATORIES PROPOUNDED BY DEFENDANT

19. In answer to question 19 of the Interrogatories Propounded by the Defendant, the Plaintiffs will claim that the Defendant violated the laws of the State of New Jersey known as the New Jersey Laws, Chapter 369, enacted March 29, 1972, and the Regulations issued thereunder by the Commissioner of Community Affairs, which laws and regulations put the Defendant on notice of the dangerous condition, requiring him to correct it within a reasonable time and to replace the thin window glass with a pane of safety glass; the Defendant violated the requirements of Federal Specification DD-G-451c and ANSI Z97.1-1972 and FHA and AAMA Standards; it will also be claimed that the Defendant violated the Safety Glazing Memorandum (Rules and Regulations) of the State of

SUPPLEMENTAL ANSWER TO INTERROGATORIES

New Jersey; it will also be claimed that the Defendant failed to meet the standard and test requirements of the United States of America Standard Institute Code Number Z-97.1-1966 and Z-97.1-1971 and other tests which when constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material; the Plaintiffs will contend that the entrance door to the premises, 319 McCabe Avenue, Bradley Beach, New Jersey, was a hazardous location within the meaning of the said law and interpretations.

Dated: New York, New York
September 23, 1975

CORCORAN AND BRADY
Attorneys for the Plaintiffs
11 Park Place
New York, New York 10007
Tel.: (212) 227-2242

BY _____
WILLIAM J. CORCORAN
A Member of the Firm

TO: GARBARINI, SCHER, DeCICCO
& BERARDINO, ESQS.
Attorneys for Defendant
500 Fifth Avenue
New York, New York 10036
Tel.: (212) 695-6622

NOTICE OF MOTION TO DISMISS ACTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

----------x

Index No. 75 Civ 10[illegible]3

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the undersigned attorney for ALBERT RAPELLA, will move this Court before the Honorable MILTON POLLACK on the 21st day of November, 1975 or such other times as the Court may direct in Courtroom Number 2001 of the United States Courthouse, Foley Square, New York, New York, for an order dismissing the within matter on the grounds that there is no federal diversity of citizenship.

This motion is based upon the pleadings, the annexed depositions, the affidavit of SABINO J. BERARDINO and the attached memorandum of law.

Dated: New York, New York

November 6, 1975

GARBARINI, SCHER, DECICCO & BERARDINO
Attorneys for Defendant
ALBERT RAPELLA
by SABINO J. BERARDINO

/s/

A Member of the Firm
500 Fifth Avenue
New York, New York 10036
(212) 695-6622

G-3874

NOTICE OF MOTION TO DISMISS ACTION

TO:

CORCORAN & BRADY
Attorneys for Plaintiffs
11 Park Place
New York, New York 10007
(212) 227-2242

AFFIDAVIT OF SABINO J. BERARDINO IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

----------x

AFFIDAVIT IN SUPPORT OF MOTION

Index No. 75 Civ 1023

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SABINO J. BERARDINO, being duly sworn, deposes and says:

That I am a member of the firm of GARBARINI, SCHER, DECICCO & BERARDINO, attorneys for the defendant, ALBERT RAPELLA.

This affidavit is submitted in support of a motion to dismiss this action on the grounds that there is no federal diversity of citizenship.

The within action sets forth two causes of action. The first seeks damages in the sum of $350,000 for personal injuries sustained by the infant, DAWN DONOHUE. The second cause of action seeks damages in the sum of $250,000 for loss of services, medical expenses incurred and emotional injury incurred by the plaintiff, DOROTHEA DONOHUE. The action was instituted by the service of a summons and complaint dated January 6, 1975.

Thereafter, depositions of DAWN DONOHUE, her Mother, DOROTHEA DONOHUE, and ALBERT RAPELLA, were taken. Copies of the

LG-3874

depositions of DAWN DONOHUE and DOROTHEA DONOHUE are annexed hereto as Exhibit A. A copy of the deposition of ALBERT RAPELLA is annexed hereto as Exhibit B.

During the course of her deposition, plaintiff DOROTHEA DONOHUE testified that she presently resides at 200 Third Avenue, Belmar, New Jersey. (Page 3, line 23). She further testified that her children, who still reside with her, Patricia Donohue and Dawn Donohue, attend school in Belmar, New Jersey. (Page 4, lines 11 to 17). That in November of 1973, these children transferred schools from New York to New Jersey. (Page 11, lines 9 to 18). That from November, 1973 to November, 1974, the plaintiffs resided at 132 Cookman Avenue, Oceangrove, New Jersey. (Page 9, line 25 to page 10, line 11). That thereafter, the family moved to 151 Stockton Avenue, Oceangrove, New Jersey where they remained for approximately eight months. (Page 6, line 24 to page 7, line 3). That from September, 1974 to June, 1975, the family resided at 327 16th Avenue, Belmar, New Jersey. (Page 6, lines 5 to 9) As indicated above, the family is presently living at 200 Third Avenue, Belmar, New Jersey.

DOROTHEA DONOHUE testified that neither she nor her husband are registered to vote. (Page 12, lines 6 to 22). She testified that neither she nor her husband have been employed since 1973. (Page 13, lines 7 to 10). Mrs. Donohue testified that neither she nor her husband own any property in the State of New York. (Page 15, lines 22 to 24). Mrs. Donohue testified that she has no place picked out to live in New York (Page 60, line 4) and

has not gone to any real estate agents concerning looking for a place to live in the State of New York. (Page 60, lines 18 to 24). In his deposition, Mr. Albert Rapella, testified that his address is 100 Pauling Boulevard, Leonia, New Jersey.

Although the plaintiff claims that there is diversity of jurisdiction in this case in that the plaintiffs are domiciliaries of the State of New York and the defendant is a domiciliary of the State of New Jersey, it is clear that the facts as testified to by the plaintiff do not sustain these allegations. By the plaintiff's own testimony, it is established that the plaintiffs live in the State of New Jersey, that the plaintiff's children go to school in the State of New Jersey, that the plaintiff is not registered to vote in the State of New York, that the plaintiff's husband is not employed in the State of New York and that no property is owned in the State of New York. At best, there is a former domicile in the State of New York which was changed to the State of New Jersey following the occurrence herein and prior to the institution of this lawsuit. The defendant, ALBERT RAPELLA, is clearly subject to the jurisdiction of the Courts of the State of New Jersey where the plaintiffs are now domiciled.

WHEREFORE, it is respectfully requested that this motion to dismiss the within action on the basis that there is no diversity of citizenship and thus, no federal jurisdiction be granted in all respects.

S/
SABINO J. BERARDINO

Sworn to before me this
6th day of November, 1975.

S/ MARGUERITE PELLINO
Notary Public, State of New York
No. [illegible] Westchester County
Commission Expires March 30, 1976 77

S/
NOTARY PUBLIC

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SABINO J. BERARDINO.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

DAWN DONOHUE, an infant by DOROTHEA DONOHUE her Mother and Natural Guardian and DOROTHEA DONOHUE, Individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

- -x

Depositions of DOROTHEA DONOHUE and DAWN DONOHUE, Plaintiffs, taken by the Defendant, pursuant to Notice dated June 19th, 1975, at the offices of Garbarini, Scher, DeCicco & Berardino, Esqs., 500 Fifth Avenue, New York, N.Y., on the 3rd day of September, 1975, at 3:30 o'clock P.M., before Philip C. Rizzuti, a Notary Public of the State of New York.

Appearances:

CORCORAN & BRADY, ESQS.,
Attorneys for the Plaintiffs,
11 Park Place, New York, N.Y., 10007
WILLIAM J. CORCORAN, Esq., of Counsel.

GARBARINI, SCHER, DeCICCO & BERARDINO, ESQS.,
Attorneys for the Defendant,
500 Fifth Avenue, New York, N.Y., 10036
PHILIP A. DeCICCO, Esq., of Counsel.

-and-

FEINBERG & CHARLES, ESQS.,
415 Madison Avenue, New York, N.Y.
ALFRED W. CHARLES, Esq., of Counsel.

- - -

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that filing, sealing and certification of the within deposition be and the same are hereby waived;

That the witnesses may be sworn at the taking of their depositions by any Notary Public of the State of New York, and that the witnesses may read, sign and swear to their depositions when the same is transcribed before any Notary Public, with the same force and effect as if signed and sworn to before a Judge or Clerk of the Court.

SALLY SHELKIN, C.S.R.

That a copy of the within deposition, when transcribed, shall be supplied to the Attorneys for the Plaintiffs without charge by the Attorneys for the Defendant;

That all objections, except as to the form of the question may be reserved to the time of the trial of the action.

- - -

D O R O T H E A D O N O H U E, having been first duly sworn by Philip C. Rizzuti, a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY
MR. DeCICCO:

Q Would you please state your name and address for the record.

A Dorothea Donohue, 200 Third Avenue, Belmar, New Jersey.

Q Mrs. Donohue, are you married?

SALLY SHELKIN, C.S.R.

A Yes.

Q What is your husband's name?

A William.

Q Do you have any children?

A Yes.

Q What are their names and ages, please?

A Brand, 24; Steve, 23, Catherine, 20; Patricia, 14; Dawn, 10.

Q How many of your children presently reside with you?

A Patricia and Dawn.

Q Do Dawn and Patricia attend school?

A Yes.

Q What school do they attend?

A St. Rose.

Q Where is that?

A Belmar.

Q Do you have the address?

A Not offhand.

MR. DeCICCO: If we provide a space in the transcript, will you provide the address?

MR. CORCORAN: Yes.

MR. DeCICCO: Leave a space.

SALLY SHELKIN, C.S.R.

A _____

_____

Q What grades are your children in?

A Dawn is in the 4th grade and Patricia is in the first year of high school.

Q Mrs. Donohue, how long have you lived at your present address?

A As of June of this year.

Q June of '75?

A Yes.

Q Where did you live before that?

A 327 16th Avenue, Belmar.

Q Other than your husband and children, does anyone else live with you at your present address?

A No.

Q Do you rent there or do you own the home?

A I rent temporarily. I intend to return to New York.

MR. DeCICCO: Objection. I move to strike the answer as not being responsive.

Q Do you have a lease?

A Yes, I do.

Q When was the lease entered into?

A June.

SALLY SHELKIN, C.S.R.

Q How long does that lease run for?

A For a year.

Q Your prior address, 327 16th Avenue, Belmar, how long did you live there?

A From September until June.

Q September of '74 to June of '75?

A Yes.

Q Who lived there with you?

A My two daughters and husband.

Q Anyone else?

A No.

Q Was that also under a lease or was there another type of agreement?

A It was under a lease.

MR. CORCORAN: Excuse me. Are you talking about 200 Third Avenue?

MR. DeCICCO: No, 16th Avenue.

Q Did you say there was a lease at 327 16th Avenue?

A Yes. It was a winter lease.

Q Where did you live before that?

A 151 Stockton Avenue, Oceangrove, New Jersey.

Q How long did you live there?

SALLY SHELKIN, C.S.R.

A Approximately eight months.

Q Who resided with you there?

A The same.

Q Your husband and children?

A Yes.

Q Anyone else?

A No.

Q Was that pursuant to a lease?

A There was, but there were many complaints that I had which they did not take care of. So, therefore, I moved out.

Q How long was that lease for?

A It was for a year.

Q When was it to run from and when was it to run to?

A Prior to when I moved to the winter rental.

Q Did you remain there for the entire period of the lease?

A No, I did not.

Q You say it was a year lease?

A Yes, but with the complaints that I had, they agreed that it was all right that I move.

Q What months were you there at that address?

SALLY SHELKIN, C.S.R.

A The eight months before I moved to the winter rental.

Q What months?

A I would say from about November of '74 on. I cannot give you a definite point on that until I check my receipts.

Q Approximately November of '74 is when you moved there?

A I was still in New York City then, there was too much traveling back and forth. After I got the final results of how long it would take for her operation and --

MR. DeCICCO: I move to strike that as not being responsive.

Q Was it in 1974 that you moved into that Stockton Avenue address?

A Yes, I would say so.

Q When you moved to the Stockton Avenue address, did you have any other residence?

A No. I was visiting my daughter.

Q You say you were visiting your daughter, did you live with her for any period of time?

A Well, the only reason I stayed longer than I wanted to was because of Dawn's accident.

Q Did you remain for any period of time?

SALLY SHELKIN, C.S.R.

A I remained with her until Dawn was strong enough to go home.

MR. DeCICCO: I move to strike it as not being responsive.

Q For what period of time were you at your daughter's residence?

A I would say within a month.

Q What month?

A From July until August.

MR. CHARLES: 1973?

THE WITNESS: Yes.

Q Where did you live after August of 1973?

A 120 West 91st Street.

Q That is in Manhattan?

A Yes.

Q How long did you remain at that address?

A I think I stayed there until about November.

Q Of what year?

A It was 1973, I think.

Q So you were at 120 West 91st Street at least from August of '73 to November of '73?

A Yes.

Q Where did you live after November of '73?

SALLY SHELKIN, C.S.R.

A Then I moved to Jersey.

Q Where in Jersey?

A I lived at 132 Cookman Avenue.

Q What town was that in?

A Oceangrove.

Q You were there from November of 1973 until when?

A Until I moved to Stockton.

Q In November of '74?

A Yes.

Q Where did you live prior to July of 1973?

A July of '73?

Q Yes.

A 120 West 91st Street.

Q How long did you live there?

A Eight years.

Q Where did you live before that?

A 170 West 89th Street and I lived there for ten years.

Q In September of 1973, did either of your children Dawn or Patricia start school?

A They were in school in September, yes.

Q What school?

A Dawn was in P.S. 84 and Patricia was in St. Gregorys.

SALLY SHELKIN, C.S.R.

Q Where are they located?

A St. Gregorys is at 131 91st Street and I am not certain of the address of P.S. 84. P.S. 84 is at 32 West 92nd Street.

MR. CORCORAN: Manhattan?

THE WITNESS: Yes.

Q Did Dawn and Patricia remain in those schools until June of 1974?

A No.

Q What day did they transfer schools?

A When we moved.

Q Namely November of '73?

A Right.

Q What schools did they go to in November of '73?

A Dawn attended Oceangrove Elementary School and Patricia went to Neptune Junior High School.

Q What are the addresses of those schools?

A I don't know offhand.

Q What town?

A Neptune Junior High School would be in Neptune.

Q And Oceangrove would be in Oceangrove?

A Yes.

Q Did they remain in those schools for the 1973-

SALLY SHELKIN, C.S.R.

1974 school year?

A Yes. When I moved to 327 16th Avenue, I transferred them to -- I don't know.

Q Mrs. Donohue, in 1973 were you registered to vote?

A No.

Q When was the last time you were registered to vote?

A When I intend to move back to New York.

MR. DeCICCO: I move to strike that as not being responsive.

Q When was the last time you were registered to vote?

A I haven't voted.

Q In how many years?

A In a couple of years now.

Q How about your husband?

A No.

Q No, he is not registered to vote now?

A No, he isn't.

Q Do you drive an automobile?

A No.

Q Does your husband drive?

SALLY SHELKIN, C.S.R.

A No.

Q Did you own any cars for the year 1973 up to and including the present?

A No.

Q From 1973 to the present, have either you or your husband been employed?

A No. My husband is retired.

Q When did he retire?

A A couple of years ago.

Q Do you recall the year?

A The end of November.

Q What year?

A 1973.

Q Did your husband file an income tax return for the year 1973?

A Yes.

Q Where was that income tax return filed? Was it the Federal return?

A Yes.

Q In addition to the Federal return, were any state income tax returns filed?

A I would have to ask him.

Q If we provide a space in the transcript, will

SALLY SHELKIN, C.S.R.

you indicate if a state return was filed and if so, the name of the state?

Additionally, indicate further whether it was a resident or non-resident state return.

A I am not certain about the state.

Q Do you have records at home that would indicate that?

A Yes.

Q When you check those records, would you indicate whether or not a state return was filed for the year 1973?

A Yes.

Q If so, please indicate the state and whether it was a resident or non-resident income tax return?

A Yes.

MR. DeCICCO: Leave a space.

A _____

_____

_____

Q Did your husband file a city income tax return for the year 1973 for New York City?

A I will have to check.

Q If I provide a space in the transcript for

SALLY SHELKIN, C.S.R.

that information, will you please indicate whether it was a resident or non-resident return?

A Yes.

MR. DeCICCO: Leave a space.

A _____

_____

Q Are you presently employed?

A No, I am not.

Q Have you been employed since 1973?

A No.

Q Mrs. Donohue, how old is your husband?

A 63.

Q Is he receiving Social Security?

A Yes.

Q How old are you?

A 48.

Q Do either you or your husband own any property in the State of New Jersey?

A No.

Q Do you or your husband own any property in the State of New York?

A No.

Q On July 29, 1973, was your daughter involved

SALLY SHELKIN, C.S.R.

in an accident?

A Yes.

Q That is your daughter Dawn that we are talking about?

A Yes.

Q Approximately what time of the day did that accident take place?

A I would say in the early afternoon if I recall correctly.

Q Can you be more specific as to the time?

A It was after lunch. The exact time, I do not know.

Q Did you witness that accident?

A No, I did not. We heard the breaking of the glass and the terrific screaming and then we all ran downstairs. There was a doctor's wife who lived two doors from us who came to our aid and someone had already called an ambulance and the police came.

MR. DeCICCO: I move to strike that as not being responsive.

Q When was the last time you had seen your daughter before the accident happened?

A When she had lunch.

Q Where did she have lunch?

SALLY SHELKIN, C.S.R.

A In my daughter's house.

Q Do you know if anyone was with your daughter at the time of the accident?

A Her sister Patricia was trying --

Q Anyone else?

A Not that I know of.

Q Does your daughter have any children?

A Yes.

Q How old are your daughter's children?

A She had a baby, she was about seven months, I think. Six or seven months.

Q When for the first time did you go to the premises known as 319 McCabe Avenue, Bradley Beach?

A About four or five days prior to the accident.

Q For these four or five days prior to the accident, did you stay at that premises?

A Yes.

Q Were you sleeping there?

A Yes.

Q Where were you sleeping?

A Well, my daughter had given us her room and then she had fixed me a room in the attic. An extra room that she had cleaned out and they put a bed and chest

SALLY SHELKIN, C.S.R.

and so forth up there so it would be liveable.

Q This was the upstairs apartment?

A It was just an extra room that they were given permission to use.

Q It was above the first floor?

A Yes.

Q For that four or five days, who stayed at the premises that your daughter was in?

A Well, Dawn, myself and Patricia.

Q Was your husband with you?

A No, he was working. He was in New York.

Q Do you know the names of any witnesses to the accident involving your daughter?

A There were so many people there, apparently the people who called the ambulance witnessed it. They called the ambulance before we called ourselves. They must have witnessed it.

Q Do you know their names?

A Possibly it was a Mrs. Andredy or something like that. I believe she told me that she was the lady who called the ambulance.

Q Other than Mrs. Andredy, was there anybody else?

A There were a number of people there, but I was not

SALLY SHELKIN, C.S.R.

fully acquainted with my daughter's neighbors to know their names.

Q Was your daughter renting the property there?

A Yes.

Q From whom was she renting the property?

A Mr. Rapella.

Q When did your daughter move into that property?

A I don't know exactly. Mr. Rapella would know.

Q Was Mr. Rapella the landlord when your daughter moved in?

A I don't think so.

Q Was your daughter there --

A No, because Mr. Rapella told me that he had recently purchased the property.

Q Did your daughter pay any extra money to Mr. Rapella so that you could stay at the premises?

A Not that I know of. I believe she was allowed to entertain guests for the rent that she was paying.

Q Did you pay anything to stay there?

A No, I did not. My daughter invited me down as a guest.

Q Was anyone living in the downstairs apartment?

A Yes, a Mrs. Tucci.

SALLY SHELKIN, C.S.R.

Do you know her first name?

A Rose.

Q Was Mrs. Tucci a tenant when you first went to visit your daughter?

A She was moving in for the summer only. She was there when my daughter's accident occurred.

Q Do you know if she witnessed the accident?

A No, I do not.

Q Did you ever meet Mrs. Tucci?

A Yes, I know Mrs. Tucci.

Q Did you know her before you went to the house?

A Yes.

Q How long have you known Mrs. Tucci?

A A number of years, she is from Manhattan.

Q Do you know her address in Manhattan?

A No, I don't know right now.

Q Do you have any records which would indicate her address in Manhattan?

A My daughter would know, I could find out.

Q If we provide a space in the transcript, will you give us her present address?

MR. CORCORAN: Yes.

MR. DeCICCO: Leave a space.

SALLY SHELKIN, C.S.R.

A _____

Q Did you ever socialize with Mrs. Tucci before the accident?

Was she a friend?

A Casual.

Q Did Mrs. Tucci have children that went to school with your daughters?

A She had a little boy that attended P.S. 84, also my daughter knows her daughter.

Q Did you ever give a statement to your attorney or any of his representatives about how the accident happened?

A Did I ever give a statement to Mr. Corcoran about how the accident happened?

Q Yes.

A Yes.

Q In writing or was it orally?

A I believe it was an oral statement.

Q Did Mr. Corcoran or any of his representatives obtain statements from any other witnesses who had seen the accident?

A Not to my knowledge, no.

Q Do you know how Mrs. Tucci became a tenant downstairs?

SALLY SHELKIN, C.S.R.

A No, I do not.

I believe my daughter informed her daughter that the apartment was going to be available for the summer and she was looking for a summer rental.

Now that I think back, I think my daughter asked Mr. Rapella about it and he gave my daughter permission to tell her that it would be available if she wanted it.

Q When did this take place?

A I don't know the exact date, but I know that Rose Tucci was living on the premises when Dawn had her accident.

Q Do you know how long Mrs. Tucci was living there?

A I think she came down about approximately the same time I did or a couple of days after or a couple of days before. I am not certain as to the time she came in.

Q I believe you said previously that you were upstairs before the accident happened?

A That is right.

Q Who was upstairs with you?

A My daughter Kathy and her daughter.

Q Mrs. Donohue, when you were saying before that your daughter knew Mrs. Tucci, who were you referring to?

SALLY SHELKIN, C.S.R.

A Katherine.

Q What is Katherine's full name?

A Horgan, Katherine Horgan.

Q Her husband is John Horgan?

A Right.

Q Do you know their present address?

A 2B Eathoncrest Drive, Eatontown.

Q That is in New Jersey?

A Yes.

Q To your knowledge, did your daughter or her husband, was either of them friendly with Mrs. Tucci?

A Yes.

Q Did they socialize?

A Did they confer on the phone or whatever?

Q Yes.

A Yes, sometimes. Her daughter calls my daughter.

Q Mrs. Tucci calls your daughter?

A Yes. She visits my daughter.

Q To your knowledge, was Mrs. Tucci's daughter present on the day of the accident at McCabe Avenue?

A I am not certain. She did have her son and daughter down with her.

Q Do you know their names, please?

SALLY SHELKIN, C.S.R.

A Christine and Peter.

Q Are these infants or adults if you know?

A The boy is about 7 and Christine is 17, I think.

Q We were discussing the fact that you were upstairs with your daughter and son-in-law when you heard the glass break.

What did you do then?

A We heard the crash of the glass and then we heard the screaming and we jumped up and ran downstairs.

Q What did you see downstairs?

A I saw Dawn standing with blood on her and my son-in-law picked her up. He ran down the street to a telephone because he did not have a telephone and fortunately there was a doctor two doors from where they lived.

Meanwhile, somebody had called an ambulance and the doctor's wife ran to our rescue and she was trying to put something on Dawn's arm to stop the bleeding.

Q When you went downstairs, where was she standing?

A On the porch.

Q Inside or outside?

A Outside.

SALLY SHELKIN, C.S.R.

Q Was anyone with her outside?

A No.

Q Was your daughter Patricia around?

A My daughter Patricia was inside. She was trying to turn the catch and it was too difficult. Everyone had problems with the catch, Mrs. Tucci, my daughter, and myself.

It was very difficult to open the door and she was trying to open the door and she was pushing the metal with her knee to try and get the door to open.

Dawn was trying to say something to her and when she did that, the glass just broke and --

Q I am sorry, did you see this when you went downstairs?

A What I saw was Dawn standing on the porch with blood on her and she seemed to be in shock.

Q When you came downstairs, Patricia was inside?

A As far as I know, the story about Patriciacame to me after I came home from the hospital a couple of days after. After I saw Dawn, I don't remember seeing anybody else.

Q Did you speak to Dawn after the accident on the front stoop?

SALLY SHELKIN, C.S.R.

A At that time Dawn could not recall too much.

Q What did you say to her and what did she say to you?

A When I saw her on the porch, Dawn did not say anything.

Q What did you say to her?

A I just stood there. My son-in-law picked her up. We rushed with her, she was still in shock. She did not say anything at all.

Q Did you discuss the accident with Pat at any time since the accident?

A Yes.

Q Did Patricia see the accident happen?

A Yes.

Q Did you ask Patricia how the accident happened?

A Yes.

Q What did you say to her and what did she say to you?

A She told me what happened.

Q What did she say?

A She was having trouble getting the door open. The latch was tricky or whatever and Dawn was calling her and she could not hear what Dawn was saying. She was

SALLY SHELKIN, C.S.R.

trying to get the door open and she could not get the door open and she was pushing it with her knee and trying to get the door open and that is about it.

Q When you say that is about it, what happened? Did Patricia say that she saw that or did she say that Dawn told her that?

A Patricia said that she saw it, she told me how it happened. I remember Rose Tucci saying that she ran, she was in the kitchen and she ran to the door when she heard the glass break and she heard the screaming.

Q After the accident happened, did either you or anyone acting on behalf of you take possession of any of the metal clips that held the door in place?

A No.

Q Specifically, does John Horgan have any clips from that door?

A Not to my knowledge.

Q The door itself, could you describe it?

A It is a metal door with glass.

Q How many pieces of glass?

A I think -- I am not certain as to whether there were one or two pieces of glass in it.

Q At any time before the accident happened did

SALLY SHELKIN, C.S.R.

you see how that glass was held in place?

A It seemed to be loose. When I opened the door, there seemed to be a slight tremor in it.

Q Did you see how it was held in place, were there any fasteners of any sort there?

A I did not notice any.

Q When you say the glass seemed loose, when did notice that?

A When I was having trouble opening the door. I cautioned the children about the door.

Q When was that?

A A couple of days after I arrived at my daughter's house. I believe she said that she had complained about it.

Q She had complained about it previously to the landlord?

A I think so. I think her husband had spoken to Mr. Rapella.

Q Do you know what kind of glass there was in the door?

A Well, I recall having a conversation and I was informed that it was cheap glass. The man that installed the glass apparently did not have the knowledge

SALLY SHELKIN, C.S.R.

as to how to install glass.

Q Who installed the glass?

A I don't know the name of the man who installed the glass.

Q Do you know if it was a plateglass in the window?

A I don't know anything about glass myself.

Q Do you know if it was tempered glass?

A I have no knowledge.

Q Did you have any conversations with Mr. Rapella about the glass in the door?

A Yes, I did, after Dawn's accident.

Q Did you have any conversation with him before the accident?

A No, I did not.

Q When for the first time following the accident did you have a conversation with Mr. Rapella?

A A couple of days after we had returned home from the hospital.

Q What was the sum and substance of that conversation?

A About Dawn's accident and he informed me that he was insured. He told me that he knew that the glass was not

SALLY SHELKIN, C.S.R.

break-proof and that New Jersey Law said that the glass had to be break-proof.

Q After the accident happened, did you look at the door?

A Yes.

Q Was it one glass or two in there?

A There wasn't any glass in the door at all after the accident.

Q None whatever?

A No, there was not.

Q Before the accident, did you look at the door?

A Well, not particularly. A door is a door. You don't observe a door if you are visiting someone, you are thinking about going to the pool and things like that.

Q At no time before the accident did you notice whether there was one or two pieces of glass in that door?

A I am not positive.

Q You say after the accident that there was absolutely no glass in the door?

A Right.

Q Do you know the dimensions of the door?

A No.

SALLY SHELKIN, C.S.R.

Q Did it go the whole length of the door or was it only a part of the way where the glass was?

A I would think that it was possibly 2-1/2 x 3-1/2 feet. That is what I thought it was.

Q Where on the door was it located? Was it located in the lower portion or the upper portion or the whole door?

A I would say that there was a metal area possibly this high from the floor. (indicating)

MR. DeCICCO: Indicating a distance of approximately a foot and a half.

A (Continuing) There was glass going up about this high. (indicating)

MR. DeCICCO: Indicating approximately three and a half to four feet.

MR. CORCORAN: I don't understand. Mrs. Donohue, go over to that door and tell us where the glass started from.

(Witness complies)

A (Continuing) I would say that the metal was from here up to here. (Indicating)

MR. CHARLES: Indicating approximately two and a half feet.

SALLY SHELKIN, C.S.R.

Q Then where was the glass?

A From here up to here (indicating).

MR. CHARLES: Indicating approximately three and a half to four feet.

Q Was there anything above that glass?

A Metal.

Q That was the only glass you remember on the door?

A Yes. There may have been a metal bar in between here. (indicating)

Q At the time when you went downstairs, was there one door or more than one door at the entrance to the building?

A I believe there were two doors. There was a wooden door that was open for the summer. I imagine there was some kind of lock or catch to hold it in position.

Q When you went downstairs after you heard the glass break, was that door open?

A Yes. It was always open for the time I was there.

Q Was there any screen on the storm door?

A There was no screen.

Q Did John Horgan see the accident happen?

A No, we were sitting upstairs.

SALLY SHELKIN, C.S.R.

Q As was your daughter?

A Myself, my daughter and my son-in-law were upstairs.

Q Your daughter Katherine?

A Yes.

Q Following the accident, when was the first time Dawn received any medical care or attention?

A When the doctor removed her cast.

Q You don't understand the question.

When was the first time anyone treated Dawn's arm?

A When she left the hospital?

Q At any time including the hospital; in other words, who was the first person to treat your daughter at the hospital?

A Dr. Jasitius. He was there when we arrived at the hospital from the ambulance.

Q Did your daughter see any other doctors before she saw Dr. Jasitius?

A No.

Q Which hospital was your daughter taken to?

A The Jersey Shore Hospital.

Q Could you tell us what was done for your daughter at the Jersey Shore Hospital? What you saw

SALLY SHELKIN, C.S.R.

being done for your daughter?

A Well, as soon as we arrived she was brought into the emergency room. She underwent a lot of shock and pain while they removed the glass from her wrist and arm.

Q Anything else that you saw?

A I saw the open cut, I was extremely frightened. I did not know at that time the extent of her injury as to whether she would lose the hand or what.

Q Which hand?

A The left wrist and she is left-handed.

Q Anything else that you saw being done for your daughter in the hospital?

A No. Just the removal of the glass and the treatment and the injections. Then they brought her up for the operation.

Q In the hospital, was she under the care of a specific doctor?

A Dr. Jasitius.

Q Any other doctor?

A I imagine the doctors in the hospital did see her.

Q You are talking about the house physicians?

A Yes.

SALLY SHELKIN, C.S.R.

Q How long did she remain in the hospital?

A Several days.

Q Was she there until the end of July?

A She was there until the 30th.

Q Following her discharge from the Jersey Shore Hospital, did she ever go to any other hospitals?

A No.

Q She was never admitted to any other hospital?

A No.

Q She never went to any other hospital for treatment?

A No.

Q Did you receive a bill from the Jersey Shore Hospital?

A Yes.

Q What was the amount of that bill?

A I don't know exactly. Like I said, I have everything at home.

Q If we provide a space in the transcript, will you provide the amount of that bill?

A Yes.

MR. DeCICCO: Leave a space.

A _____

SALLY SHELKIN, C.S.R.

Q Was that bill paid?

A Not all of it.

Q How much was paid?

A I would have to check.

Q By whom was it paid?

A Partially by the insurance.

Q Which insurance?

A My husband's union.

Q Do you know how much they paid?

A I don't know, I would have to check.

Q If we leave a space in the transcript, will you provide how much the union paid and how much the total bill was?

A Yes.

MR. DeCICCO: Leave a blank space, please.

A _____

Q Did you receive a bill from any other doctors in relation to the hospital treatment?

A No.

Q Did you receive a bill from Dr. Zakhary?

A Yes.

Q How much was that bill?

A I think that was $65, I am not positive.

SALLY SHELKIN, C.S.R.

Q Was that bill paid?

A I think that bill was paid, I will have to check.

Q By whom was that bill paid?

A We paid it.

Q Following your daughter's discharge from the hospital, when was the next time she received any medical care or attention?

A I would have to check the dates, she has been going to the doctor periodically.

Q Approximately when was the first time?

A I think I had to bring her back a week later or something like that.

Q When you brought her back, where did you bring her?

A To Dr. Jasitius' office.

Q What did he do for her the first time you brought her back?

A He cut the cast down so that she could move her fingers.

Q Anything else?

A Not at that time.

Q When was the next time she saw Dr. Jasitius?

A When he removed the cast.

SALLY SHELKIN, C.S.R.

Q When was that?

A That was about three weeks later, between three and four weeks after the accident.

Q On that second visit when the cast was removed, what else was done for your daughter?

A He gave me a series of things that I would have to do for her.

Q What things were those?

A Baths, exercises.

Q What did those exercises consist of?

A Moving the hand in certain directions, moving the fingers and so forth and so on. She wasn't allowed to take gym in school. She wasn't allowed to ride a bike or any of those things at that time. We had to watch her constantly.

Q Anything else?

A Aside from the fact that I had to help her eat and give her baths and exercise her fingers, no.

Q After that second visit, when was the next time she saw any doctor or physician?

A Well, I think we saw him about six weeks after that.

Q What did he do then?

A He checked her and he saw an improvement. But he

SALLY SHELKIN, C.S.R.

said it would take time.

Q Anything else that he did on that visit?

A No.

Q When was the next time following that that you saw or your daughter saw Dr. Jasitius or any other doctor?

A Well, I saw Dr. Jasitius about a month ago.

Q We are talking about at a point roughly eleven weeks after the accident when you saw Dr. Jasitius for the third time.

A We have seen him periodically.

Q Let's try to take it in chronological order.

A From the third visit, I would say about two months after that we saw him again.

Q What happened on that visit?

A He examined the hand and we still had to take precautionary measures. She was still restricted from gym and so forth.

Q Following that visit which was two months after the third visit, when was the next time she saw any doctor or physician?

A Well, it was still Dr. Jasitius and he told me the same thing.

SALLY SHELDON, C.S.R.

Q When was that?

A That was maybe a couple of months later.

Q When you say several months --

A Maybe two and a half months later.

Q Was that again an examination?

A Yes.

Q When was the next time after that?

A That was about a month ago.

Q Do you have an appointment to see Dr. Jasitius in the future?

A Yes. I have to see him again on the 16th.

Q The 16th of what month?

A This month.

Q Have you received a bill from Dr. Jasitius?

A Yes.

Q What is the amount of that bill to date?

A $765.

Q Other than the Jersey Shore Hospital and Dr. Jasitius, has Dawn seen any other doctors for treatment?

A No.

Q Has she received any physiotherapy?

A No.

Q Any other medical care or a[illegible]on?

SALLY SHELKIN, C.S.R.

A No.

Q Did you incur any bills for nursing services?

A No.

Q At any time before the accident happened, did you have any conversation with Mr. Rapella concerning the condition of the front door?

A You mean since the visit that we discussed that you asked me about before?

Q Yes.

A Do you want me to tell you about it again?

I had that one conversation with him.

Q That was after the accident?

A Yes.

Q Did you ever talk to him before the accident about the door?

A No. I did not feel that it was my place to say anything about the door. I wasn't living there, I was just visiting.

Q Getting back just for a minute to the injuries, I think you said your daughter did not receive any physiotherapy?

A That is right.

Q Do you have any bills for drugs?

SALLY SHULKIN, C.S.R.

A She did receive medication, yes.

Q Approximately what was spent for drugs?

A In the category of $100.

Q Is that included in the hospital bill?

A No.

Q Separate and distinct?

A Yes.

Q Did she have any appliances or medical aids that you had to buy for her arm?

A No.

Q When the cast was removed, was a bandage placed on her arm?

A Yes.

Q Was that an Ace bandage?

A No.

Q A regular gauze bandage?

A Yes.

Q How long did she keep that on?

A Several weeks.

Q When that was removed, was it replaced with anything else?

A No, just a wrist gauze.

Q How long did she keep the wrist gauze on?

SALLY SHELKIN, C.S.R.

A A couple of weeks. That was in between the visits. This last visit, I was very upset because it is apparent that she will have to undergo another operation.

Q Have you had any other bills that you haven't told us about?

A I cannot think of any. If I find any, I will give them to you.

Q As far as conversations with Mr. Rapella, I think you have testified to one that was following the accident and you said you did not speak to him before the accident about the door?

A That is right.

Q At any time before the accident happened, to your knowledge, did your daughter ever complain about the condition of the storm door?

A She spoke to me about it and I believe she mentioned it to the previous owner or landlord.

Q Do you know the previous landlord's name?

A I do not know.

Q When did she speak to you about it?

A Well, she said that she had problems herself opening that door, she said to be careful with it.

SALLY SHELKIN, C.S.R.

Q When did you have this conversation with your daughter?

A When I arrived; actually I think it was the second day after I arrived there. I noticed it.

Q To your knowledge, did your son-in-law ever complain to Mr. Rapella about the condition of the door?

A I think John did speak to him about it.

Q When?

A I am not certain, I will have to check with him. But I do believe he did say something to him, I do believe he spoke to him about it.

Q How about Mrs. Tucci?

A Well, she always used the backdoor because she said she had problems with it herself. It was annoying, she said why don't you use my entrance, the back door and I said that I did not want to impose on her because it would be a matter of knocking on her door and going through her apartment to get to the backdoor.

She told me that it would be safer for us to use the backdoor.

Q First of all, is there a Mr. Tucci that was living at that premises?

A No. Rose came down with her son and daughter.

SALLY SHIFLKIN, C.S.R

Q Do you know if Mrs. Tucci or her son or daughter ever complained about the door to Mr. Rapella?

A No, I do not. But I do recall Rose telling me about it.

Q Do you know someone named Tuccini?

A No.

Q Do you have any knowledge of a connection between Mr. Tuccini and Mr. Rapella?

A No.

Q Do you know a Mr. Andredy?

A No. I think there was some people with that name who lived across the street from my daughter.

Q Do you know of any connection between Mr. Andredy and Mr. Rapella?

A No, I do not.

Q Do you have any knowledge of the Garra Brant Agency with relation to Mr. Rapella?

A No.

Q Was any claim that the storm door was unsafe made to the Garra Brant Agency to your knowledge?

A No.

Q How about the other people I mentioned, Mr. Tuccini and Mr. Andredy?

SALLY SHELKIN, C.S.R.

A I wouldn't know.

Q To your knowledge, did Mr. Tuccini ever visit the premises while you were there?

A No, he did not.

Q Mrs. Donohue, after the accident did you ever have a conversation with your daughter Dawn about how the accident happened?

A Not for some time. Dawn still had a lot of fear and fright and she did not want to discuss it. The accident upset her very much and the doctor recommended that I don't discuss it with her.

Q Did you ever discuss it with her?

A Eventually when she wanted to.

Q When?

A A couple of months later.

Q What did she say to you?

A Exactly what Patricia said to me.

Q Could she state what she said?

A She was trying to tell Patricia something and Patricia could not hear her and she was trying to open the door and it would not open. So she pushed the metal area in with her knee to try to open the door and that is when the glass shattered. The glass cut her

SALLY SHELKIN, C.S.R

wrist.

MR. DeCICCO: I have nothing further.

EXAMINATION BY
MR. CORCORAN:

Q Mrs. Donohue, you have told counsel that you visited the premises 319 McCabe Avenue, Bradley Beach, for the first time about four or five days prior to the accident?

A Yes.

Q The accident happened on July 29, 1973?

A Yes.

Q Now, at that time that you went to the premises, was your daughter Catherine Horgan and her husband John Horgan tenants in the premises 319 McCabe Avenue?

A Yes.

Q You accompanied your daughters Patricia and Dawn on a visit to your married daughter's house?

A Yes.

Q At the time that you made this visit, were you still a tenant in the premises 120 West 91st Street in Manhattan?

A Yes.

SALLY SHEEHAN, C.S.R.

Q Did you continue as a tenant in those premises up until November of 1973?

A Yes.

Q Were those premises owned by the New York City Housing Authority?

A Yes.

Q Did you get rental bills for these premises up to and including November of 1973 from the New York City Housing Authority?

A Yes.

Q During this time, was your husband working in New York on construction work?

A Yes.

Q To the best of your knowledge, did your husband ever work in New Jersey?

A Never, not that I know of.

Q When you went to visit your daughter a few days prior to July 29, 1973, your daughter Dawn was in Public School 84?

A Yes.

Q In the Borough of Manhattan?

A Yes.

Q What grade was she in?

SALLY SHELKIN, C.S.R

A The second.

Q When you visited your daughter Kathy at Bradley Beach in July of '73, your daughter Patricia was in St. Gregorys School on West 90th Street in the Borough of Manhattan?

A 91st Street.

Q What grade was she in?

A She was in the sixth grade then.

Q When you went to visit your daughter Kathy this was in the summertime at her request?

A Yes.

Q She invited you down?

A Yes.

Q Was it your intent to return and remain a resident of the State of New York?

A Yes.

Q Had you ever lived in New Jersey prior to this visit at Bradley Beach to your daughter's in July of 1973?

A No.

MR. CHARLES: I am sorry, I did not hear the last question. Would you please read it back.

(Question and answer read.)

SALLY SHELKIN, C.S.R.

Q You lived at 120 West 91st Street?

A Yes. I also lived on 89th Street for ten years.

Q So between those two residences on 89th Street and on 91st Street, you lived a total of at least 17 years in the City?

A Approximately 18 years.

Q Tell us, what is the reason you remained in New Jersey? Was it to be near Dr. Jasitius who was the specialist who treated and operated on your daughter Dawn?

A That is right.

MR. DeCICCO: Note my objection to the question.

Q After the accident and during the treatment necessitated by this injury by Dr. Jasitius, did your husband continue to be employed in New York City continuously in the construction field?

A Yes.

Q To the best of your knowledge, has your husband ever worked in New Jersey?

A No.

Q Is it your present intention along with your family to return back to New York and resume a residence in New York or is it your intention to remain in New

SALLY SHELKIN, C.S.R.

Jersey?

A We intend to return to New York.

MR. DeCICCO: Note my objection to that question.

Q Has that intent been a constant intent since the visit to your daughter Kathy in the latter part of July of 1973?

A Yes, it has.

Q Is the reason that you remained in New Jersey to be close to the attending physician?

A That is right. Especially after this last report.

MR. DeCICCO: Note my objection.

Q Prior to this accident involving Dawn, with what hand did she write?

A Her left hand.

Q Was she left handed in all her manual activities?

A Yes.

Q As a result of this injury to her left hand, did her teachers or school require her to use her right hand instead of her left hand?

MR. DeCICCO: Objection.

MR. CHARLES: Objection.

A Yes, they did.

Q Tell us, please, what was the psychological

SALLY SHELKIN, C.S.R.

reaction that you observed in Dawn when she was required to use her right hand?

MR. DeCICCO: Note my objection.

A She became upset emotionally. She started to write the numbers and letters backwards.

MR. DeCICCO: Let me state an objection to this line of questioning. Mrs. Donohue is not a psychiatric expert. Much of what she has testified to is hearsay.

Q Mrs. Donohue, will you tell us, please, what you observed with regard to Dawn's reactions, let's say, at night when she would be going to bed?

A She was very restless, she would cry out in her sleep and she wanted me with her all the time.

Q During the night time?

A She did not want to go to sleep alone.

Q Did the constant crying of Dawn keep you up at night?

A Yes.

Q As a result of your attention towards Dawn during these periods that she was crying and when she was upset, did you lose any sleep?

A Yes. Also I lost weight.

SALLY SHELKIN, C.S.R.

Q You also lost weight?

A Yes.

Q Do you know of any occasions when Dawn did not want to go to school because of the cruelty of the children there?

A The school called me one time and told me that Dawn wasn't in school. The police brought her home. The police came to my house with her because they found her wondering in the street. I spoke to Dr. Jasitius about this and he said that he was going to call the zchool --

MR. DeCICCO: Note my objection to this as leading. Also the answer is not responsive to the question.

Q Did Dawn exhibit any of these episodes of being upset and constant crying prior to the accident?

A No.

Q Did you ever have any problems or trouble with Dawn going to sleep at night?

A Never.

Q That is prior to the accident?

A Never, never prior to the accident. I know that Dr. Jasitius said that he was going to send her to

SALLY SHELKIN, C.S.R.

another doctor and I said I was going to transfer her from that school.

MR. DeCICCO: Note my objection to that gratuitous statement.

Q What you have just told us, was that in connection with my general questions as to the characteristics and conduct of Dawn that you observed following the accident?

A Yes.

Q Did Dawn ever tell you that the children in school, the children in her class ridiculed and made fun of her and claimed that she had a claw hand?

A Yes.

MR. DeCICCO: I object to the question. It is leading and it calls for hearsay on the part of this witness.

Q Now, Mrs. Donohue, after this accident and after the operation by Dr. Jasitius, did you observe the condition of Dawn's hand?

A Yes, I did.

Q Did you observe if Dawn could close her hand into a fist?

A Yes. I observed that it took a long time before

SALLY SHELKYN, C.S.R.

she could use her hand.

Q How long a period of time would you say it took Dawn before she was able to close her hand or make a fist?

A Dr. Jasitius would have it in the records, I am not positive.

Q Was it over a lengthy period of time?

MR. DeCICCO: I object to that question as being leading.

A It was quite a long time, it was a period of months. I am not certain of the number of months.

Q Does Dawn have a prominent scar to the present date on her left arm and wrist?

MR. DeCICCO: Objection. This witness is not a medical witness, she cannot testify to that.

Q As to the present condition, does Dawn have a scar on her left wrist?

A Yes, she does.

Q Is that scar several inches in length?

A Yes.

Q With regard to the physiotherapy which you may not understand, were you told by Dr. Jasitius to have the child use a ball or use a whirlpool?

SALLY SHELKIN, C.S.R.

MR. DeCICCO: Objection, it is hearsay. She can testify as to what she observed and not what someone else told her.

Q In response to any recommendations made by Dr. Jasitius or any other doctors at the Jersey Shore Hospital, did Dawn or did you give Dawn any exercises?

MR. DeCICCO: I object to the question as being leading.

Q What type of exercises did she do?

A Mostly motivation. Moving the fingers in certain positions and so forth and so on.

Q And there were special ways to give her baths and soak the hand?

A Yes.

Q Did you observe any change in the conduct or attitude of Dawn when she was required to write with her right hand rather than her left hand?

MR. DeCICCO: Objection. It has been asked and answered.

MR. CHARLES: Objection. It is a leading question.

Q Have you ever filed a Federal tax return from New Jersey?

SALLY SHELDON, C.S.R.

A I am not certain if it was filed in New York or New Jersey, I will have to check.

Q Did you earn any moneys while working in New Jersey?

A No.

Q Well, after your husband retired, did he retire from work in New York?

A Yes.

Q Did he ever work in New Jersey?

A No.

Q Is it your best recollection that any income tax returns which were filed, were filed in the State of New York?

MR. DeCICCO: Objection.

MR. CHARLES: Objection. That is not her testimony.

Q When you heard the screams of Dawn and you came rushing down from your daughter's upstairs apartment, did you observe any broken glass on the porch?

A Yes.

Q With respect to the thickness of this glass, can you tell us if it was thick glass or thin glass or what type of glass was it?

SALLY SHEFFIN, C.S.R.

MR. CHARLES: Objection.

A I did not see, everyone said watch out for all of that glass.

Q Tell us this: Can you tell us some of the sizes of the pieces of glass that you observed?

A I really cannot. I was just too shocked at seeing Dawn standing there.

Q Were there some pieces of glass which were two or three or four inches long?

A Could have been.

MR. DeCICCO: Objection.

MR. CHARLES: Objection.

Q You had told us that you had experienced while visiting your daughter at 319 McCabe Avenue prior to July 29, 1973, you said that you experienced some difficulty in opening this door.

Was it on each and every occasion that you experienced difficulty?

A Yes, it was very difficult.

Q On every occasion?

A Yes, it was.

Q We are talking about the metal door that opens out into the porch?

SALLY SHELDON, C.S.R.

A Yes.

Q You told us also in response to a question by counsel that the glass in the metal door was loose.

Did you observe or did you hear any vibrations whenever you tried to open that door that would indicate that the glass was loose?

MR. DeCICCO: I object to that question as being leading.

A It was like a tremor.

Q Was this condition that you speak of, the condition of the loose glass which gave off a tremor when you opened it, was that there from the time you first arrived at the premises some four or five days prior to July 29th?

MR. DeCICCO: Objection. The question is leading.

A Yes.

MR. CORCORAN: I have nothing further.

MR. DeCICCO: I have a few more questions.

BY MR. DeCICCO:

Q Mrs. Donohue, can you tell me what date you intend to return to New York?

A I cannot tell you until Dr. Jasitus let's me know

SALLY SHELKIN, C.S.R.

about the operation.

Q Do you have a place picked out in New York?

A Not as yet.

Q Are you looking for any place in New York to move to?

A I will when I find out how long it is going to be before Dawn recuperates.

Q Have you up until now?

A I have been asking.

Q When was the last time you looked?

A When I visited my mother-in-law's in Long Island.

Q When was that?

A About a month and a half ago.

Q Where did you look, in Manhattan or Long Island?

A In Manhattan.

Q Did you go to any real estate agents?

A No, I did not. I inquired from a friend of mine.

Q Did you do anything else?

A Not as yet.

Q Have you registered or left your name with any real estate agents?

A No, but I intend to after the operation.

MR. DeCICCO: I have nothing further.

SALLY SHELKIN, C.S.R.

MR. DeCICCO: Dawn, do you know what it means to tell the truth and to tell a lie?

DAWN DONOHUE: Yes.

MR. DeCICCO: Do you tell the truth?

DAWN DONOHUE: Yes.

MR. DeCICCO: Will you swear to tell the truth if we ask you questions?

DAWN DONOHUE: Yes.

D A W N D O N O H U E, having been first duly sworn by Philip C. Rizzuti, was examined and testified as follows:

EXAMINATION BY
MR. DeCICCO:

Q Will you please state your name and address for the record.

A Dawn Donohue, 200 Third Avenue, Belmar, New Jersey.

Q Do you go to school now?

A Yes.

Q Where do you go to school?

A St. Rose.

Q In what grade are you?

SALLY SHELTON, C.S.R.

A The fourth grade.

Q How are you doing in school?

A Good.

Q You are passing your subjects?

A Well, I did not start the fourth grade yet.

Q When did you start the fourth grade?

A Well, I did not start right now because I had to come here today.

Q Were you just off for the summer?

A Yes.

Q You are going back to school again?

A Yes.

Q You are going into the fourth grade?

A Yes.

Q Were you in the third grade last year?

A Yes.

Q Were you promoted?

A Yes.

Q Do you get along with your friends in school?

A Yes.

Q Do you have any gym classes in your school?

A Yes.

Q Do you go to those gym classes?

SALLY SHELTON, C.S.R.

A I did not last year but this year I am.

Q Dawn, are you a righty or lefty?

A Right now I am a righty.

Q Can you write with your right hand?

A Yes.

Q Can you move your left hand?

A Yes.

Q Does it hurt you?

A Once in awhile.

Q Is that a couple of times a week or less?

A Less.

Q Do you have friends at school?

A Yes.

Q Do you play with them?

A Every day, yes.

Q What kind of games do you play with them?

A We don't play games, we just play tag.

Q Do you have any problems with your friends when you play tag?

A No.

Q Do you own a bike, Dawn?

A No -- yes, I did have a bike.

Q When did you have a bike?

SALLY SHELKIN, C.S.R.

A I had some bikes, I don't know.

Q Have you ridden a bike since you had your accident?

A I don't think so.

Q Dawn, do you remember having an accident?

A Yes.

Q Do you remember about when that happened?

A Yes.

Q Was it in the summertime?

A Yes.

Q About two years ago?

A I think so, I am not sure.

Q Do you remember where that accident happened?

A At my sister's house.

Q That is your sister Kathy?

A Yes.

Q On the day of the accident, were you playing with anyone?

A No. I was just standing on the porch in front of the door.

Q Was anybody with you?

A Nobody was with me until my sister showed up.

Q Where did she show up?

SALLY SHELKIN, C.S.R.

A She was like having trouble with the door and I was trying to tell her something and she was kicking the door with her knee and the glass broke and splattered all over.

Q Do you remember what that door looked like?

A I know part of it was glass and part of it was metal.

Q Do you remember about how many days before the accident happened that you first got to that house?

A No.

Q Were you there a couple of days before the accident?

A What do you mean?

Q Did you get to that house, were you in that house a day or so or any time before the accident?

A How long I was there?

Q Yes.

A I think I was there a week or so.

Q When you were there, did you ever go out the front door?

A Once in awhile, but I was careful. Usually, I went out the back.

Q Do you remember what kind of doorknob or lock

SALLY SHELKIN, C.S.R.

or thing there was on that door to open that door? I am talking about from the inside.

A The glass door?

Q Yes.

A It wasn't a regular door, I don't know.

Q Was it like a handle?

A Yes, something like a handle. You know, you push down on it.

Q When you got to the handle, did you have to reach up to the handle or was it some place where you could get at it without reaching up into the air?

A I could just reach it.

Q When you reached it, was it up as high as your shoulder or lower?

A It was lower.

Q When you say you were outside of the door, there came a time when your sister was inside the door?

A Yes.

Q You were trying to talk to Patty?

A I was trying to tell her something, but I cannot remember what I was trying to tell her. I don't know what it was.

SALLY SHELKIN, C.S.R.

Q Did you see Patty trying to open the door?
A She was trying to get it open with her knee and that is when the glass broke and splattered.
Q When you say Patty was kicking the door with her knee --
MR. CORCORAN: She did not say that.
Q Dawn, do you know if there was any metal at the bottom of the door?
I am talking about before where the glass started.
A I don't think so. I don't remember seeing any metal on the bottom.
Q Did the glass cover the whole door or was there part of the door that wasn't glass?
A Like I said, there was one square part of glass on top and then there was another square and then there was metal.
Q Was there any metal below the glass?
A I don't think so.
Q Could you see right through the glass inside?
A I guess so, there were two doors there. If both doors were open, you could see right through inside.
Q Do you know if the inside door was made out of

SALLY SHELKIN, C.S.R.

wood?

A Yes, it was made out of wood and it was open in the summertime.

Q Before the accident happened, did you see your sister Patty do something with her leg?

A She was like shoving it to get the door open.

Q What was she shoving?

A Against the door with her knee.

Q What part of the door with her knee?

A I think it was -- I don't know what it was, something like -- but, there was metal all underneath the glass.

Q Then, what happened? Did the glass break?

A Yes. It just broke and splattered all over.

Q Do you remember if the glass came out in one big piece or did it break and then come out?

A I think it just cracked, I don't know.

Q It cracked?

A Yes.

Q Then it came out?

A I am not sure.

Q Try to remember and tell us what you remember. Do you remember if it cracked first or did it fall out

SALLY SHELKIN, C.S.R.

first?

A I think that the whole thing must have fell out, I don't know. I am not very sure, but all I know is that it splattered all over the place.

Q When you saw Patty come to the door, was she coming from upstairs or had she already been downstairs?

A She was already downstairs.

Q About how long were you on the porch before the glass broke?

A I don't know. After I ate lunch, I just came out and I was standing by the door for a couple of minutes and then my sister came downstairs.

Q Were you playing when you were on the porch before the accident happened?

A I was just standing around because I did not have anything else to do. So all of a sudden, my sister came down and she was having trouble with the door.

Q Do you remember when Patty was trying to open the door with her hands, where were your hands at that time?

A I was trying to tell her something and the glass broke.

Q Were you leaning on the door at all?

SALLY SHELKIN, C.S.R.

A I did not touch the door.

Q Were your hands on the door before the accident happened?

A No, I don't think so. I did not touch the door.

Q Were Patty's hands on the door?

A Yes, on the handle.

Q Was it just one hand or did she have two hands on the handle?

A She had two hands on the handle and then she took her knee and put it on the metal and that is when the glass splattered.

Q How did she do that?

A She took her knee and started shoving it against the door and that is when the glass came off. That is all I remember.

Q Did Patty ever hit the door touch it with her hand or fist?

A No. Do you mean before the accident?

Q Yes.

A No.

Q After the accident happened, was there any glass left in the door?

A After or before?

SALLY SHELKIN, C.S.R.

Q After.

A Well, I wasn't there. I was at the hospital. The ambulance came and took me to the hospital.

Q After the accident happened, did you look at the door at all?

A When I came home.

Q Before you left, before you went in the ambulance I am talking about.

A Did I look at the door?

Q Yes.

A Yes, but there was no glass in it.

Q There was no glass in the door?

A No.

Q Do you remember how big the glass was?

A No.

MR. DeCICCO: I have nothing else.

MR. CORCORAN: I have no questions.

/s/ Dorothea Donohue
DOROTHEA DONOHUE

/s/ Dawn Donohue
DAWN DONOHUE

Subscribed and sworn to before me
this 29 day of October 1975
/s/ Frank Campion Notary Public of New Jersey
My Commission Expires March 22, 1976

SALLY SHELKIN, C.S.R.

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, PHILIP C. RIZZUTI, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That DOROTHEA DONOHUE and DAWN DONOHUE, the witnesses whose deposition is hereinbefore set forth, were duly sworn by me and that such deposition is a true record of the testimony given by these witnesses.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 26 day of September, 1975.

SALLY SHELKIN, C.S.R.

CORRECTIONS TO EXAMINATION BEFORE TRIAL OF DOROTHEA DONOHUE TAKEN ON SEPTEMBER 3, 1975

Page 12, line 4 - should read:

I transferred Dawn to St. Rose Parochial School, at the particular suggestion of Dr. Jasaitis because of the emotional problems she was undergoing at Oceangrove Elementary School caused by the large class which the teacher said prevented her from giving attention to Dawn and also by the taunts of her classmates by reason of her deformed claw-like hand.

Page 12, line 8 - should read:

My husband and I were both registered to vote in New York City in 1973.

Page 12, line 11 should be - 1973 as we were registered from prior years.

Page 12, line 16 should read:

I voted in 1972 in New York City.

Page 12, line 18 should read:

I last voted in 1972 in New York City and I planned to vote in 1973 in New York City.

Page 12, line 20, should read:

My husband voted last in New York City in 1972.

Page 12, line 22, should read:

He is registered and voted in New York City in 1972 and planned to vote in New York City in 1973, when he got sick.

All of the answers appearing in the transcript were given in a negative reply in the mistaken notion that the questions of registration and voting pertained to the State of New Jersey.

DOROTHEA DONOHUE

CORRECTIONS TO EXAMINATION BEFORE TRIAL OF
DAWN DONOHUE TAKEN ON SEPTEMBER 3, 1975

Page 71, Line 13 should read: I understand there were some jagged pieces of glass remaining in the door.

Page 71, Line 15, the answer should read: Yes, I understand some pieces of glass remained in the door

DAWN DONOHUE

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SABINO J. BERARDINO.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

DAWN DONOHUE, an infant by DOROTHEA DONOHUE, her mother and Natural Guardian and DOROTHEA DONOHUE, Individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant.

- -x

Deposition of ALBERT RAPELLA, taken by the Plaintiffs, pursuant to Notice dated June 19th, 1975, at the offices of Garbarini, Scher, DeCicco & Berardino, Esqs., 500 Fifth Avenue, New York, N.Y., on the 3rd day of September, 1975, at 1:30 o'clock P.M., before Philip C. Rizzuti, a Notary Public of the State of New York.

SALLY SHELKIN, C. S. R.
5 BEEKMAN STREET, NEW YORK, N. Y. 10038
(212) 964-2646
Certified Stenotype and Shorthand Reporters

Appearances:

CORCORAN & BRADY, ESQS.,
Attorneys for the Plaintiffs,
11 Park Place, New York, N.Y., 10007
WILLIAM J. CORCORAN, Esq., of Counsel.

GARBARINI, SCHER, DeCICCO & BERARDINO, ESQS.,
Attorneys for Defendant,
500 Fifth Avenue, New York, N.Y., 10036
PHILIP A. DeCICCO, Esq., of Counsel

-and-

FEINBERG & CHARLES, ESQS.,
415 Madison Avenue, New York, N.Y.
ALFRED W. CHARLES, Esq., of Counsel.

- - -

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that filing, sealing and certification of the within deposition be and the same are hereby waived;

That the witness may be sworn at the taking of his deposition by any Notary Public of the State of New York, and that the witness may read, sign and swear to his deposition when the same is transcribed before any Notary Public, with the same force and effect as if signed and sworn to before a Judge or

SALLY SHELKIN, C.S.R.

Clerk of the Court.

That a copy of the within deposition, when transcribed, shall be supplied to the Attorneys for the Defendant without charge by the Attorneys for the Plaintiffs.

That all objections, except as to the form of the question may be reserved to the time of the trial of the action.

- - -

A L B E R T R A P E L L A, having been first duly sworn by Philip C. Rizzuti, a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY
MR. CORCORAN:

Q Would you please state your name and address for the record.

A Albert Rapella, 100 Paulin Boulevard, Leonia, New Jersey, 07605.

SALLY SHELKIN, C.S.R.

Q Mr. Rapella, will you tell us please how long you have resided at that address in Leonia, New Jersey?

A 9 years.

Q Before that where did you reside?

A 415 Fifth Street, Palisades Park, New Jersey.

Q How long had you resided there?

A Approximately about ten years.

Q Are you married, Mr. Rapella?

A Yes.

Q Do you have any children?

A Yes.

Q How many children do you have?

A Three.

Q What are their ages?

MR. DeCICCO: Note my objection to that question, for the record. This line of questioning is totally irrelevant and has nothing to do with this proceeding.

Q You may answer the question.

A 20, 14 and 11.

Q Tell us, please, what business you are in.

MR. DeCICCO: Note my objection for the record. But you may answer.

SALLY SHELKIN, C.S.R.

A I am retired right now.

Q What business had you been in?

A Super marketing.

Q You owned a supermarket?

A Yes.

Q Where was it?

MR. DeCICCO: Note my objection for the record. But you may answer.

A 6818 Bergerline Avenue, Guttenberg, New Jersey.

Q How long have you been retired?

A About two years.

Q Mr. Rapella, are you the owner of the premises 319 McCabe Avenue, Bradley Beach, New Jersey?

A Yes, I am.

Q How long have you been the owner of that property?

A Since 1973.

Q When in 1973 did you purchase that property?

A I don't recall, I believe it was either May or June. I believe it was June 4th.

Q Would you describe these premises for us, please?

A In what relation do you want me to describe them?

Q First, how many tenants are in the building?

SALLY SHELKIN, C.S.R.

A At 319?

Q Yes.

A Two.

Q Does that consist of two floors, one above the other?

A Yes.

Q How many rooms are in the apartment on the first floor?

A Four rooms.

Q That would be a kitchen and diningroom and two bedrooms?

A Whichever, kitchen, livingroom and two bedrooms.

Q What would the upstairs -- what would the upstairs apartment consist of?

A The same, four rooms.

Q Is this a wood or brick structure?

A Well, it is covered. I would say that it is a frame covered with asphalt or shingles.

Q Are these premises year round or just for summer rental?

A Year round.

Q How far is Bradley Beach from the premises?

A I don't understand the question.

SALLY SHELKIN, C.S.R.

Q Is there a beach known as Bradley Beach?

MR. DeCICCO: Note my objection.

A Bradley Beach is the town.

Q How far is the beach itself from the house?

A Three blocks.

Q Is there a porch at these premises?

A Yes.

Q Would you describe the porch to us, please?

A What form of description would you like?

Q How long is the porch in front of the house?

A The length of the building.

Q How many feet would that be?

A I believe roughly 35 or 30 feet.

Q Does the porch then go around the one side of the building?

A Yes.

Q If I were standing in front of the premises, would that be on the right side of the building or on the left side of the building?

A On the right side of the building.

Q Does the porch continue on the right side of the building to the end of the structure?

A No, it does not.

SALLY SHEEHAN, C.S.R.

Q How far back does it go, halfway?

A A little better than halfway.

Q What would you say, Mr. Rapella, is the width of the porch in the front?

A Approximately five or six feet.

MR. CHARLES: By width you mean depth?

MR. CORCORAN: Yes.

THE WITNESS: Yes.

Q Would that width or depth be the same throughout the entire porch in the front and on the side?

A Yes.

Q To enter into the premises known as 319 McCabe Avenue, where is the door located?

A In relation to what?

Q In relation to going into the house, let's say, from the street.

MR. DeCICCO: Note my objection to the question. It presumes that there is only one door. I think you ought to lay a foundation, I think you ought to lay some groundwork first.

Q How many entrances are there to the premises 319 McCabe Avenue?

A Two.

SALLY SHELAN, C.S.R.

Q Where are these entrances located?

A One is in the front of the building and one is on the side of the building.

Q What side would that be? Would it be on the right side or the left side?

A I don't understand the question.

Q You said that there is a door on the side of the building --

A It is a side entrance, it would be on the right side of the building.

MR. DeCICCO: Facing the building on the right-hand side?

THE WITNESS: Yes.

Q Is that side door entrance more towards the rear of the building?

A Yes, it is.

Q In other words, it is beyond the porch?

A Yes, it is.

Q Is the front flooring of the porch on street level or are there some steps to ascend to reach the porch?

A There are steps.

Q How many steps are there?

SALLY SHELKIN, C.S.R.

A I believe five.

Q Are these steps wood or brick?

A Wood.

Q How wide are they?

A I cannot be exact, but I would say that they are at least eight or ten feet wide.

Q Is there a railing on that porch?

A Yes.

Q If you ascend the five steps, you are now on the floor of the porch?

A Yes.

Q Then you would walk some five or six feet until you reached the entrance door?

A Yes.

MR. DeCICCO: I think there has only been testimony as to the width of the porch.

MR. CORCORAN: His answer was yes.

MR. DeCICCO: Maybe that is his answer now, but I don't like you characterizing his testimony before he gives it.

MR. CORCORAN: He gave us the width of the porch as between five and six feet. Also he told us that there were five steps. So my question, Mr.

SALLY SHELKIN, C.S.R.

DeCicco, merely concluded all that evidence that he has testified to.

Namely, after reaching the five steps, after ascending the five steps, would you be on the porch, and he said yes.

After that, you would have to walk five or six feet to the door and he said yes.

BY MR. CORCORAN:

Q Is that correct that you would walk about five or six feet until you reached the entrance door in the front?

A Yes.

Q Tell us, please, how many doors there are at the front entrance of the premises?

A At the entrance?

Q The front entrance, yes.

A Two.

Q The first of those two doors that you come to as youare entering into the premises, is that a wood or metal door?

A The first door is a metal door.

Q Tell us, please, what the metal is.

A I have no idea. I believe it might be an aluminium

SALLY SHELKIN, C.S.R

door.

Q The second door, what was that made out of?

A Wood and pane glass.

Q This first door that you described as being metal or aluminium, is that a storm door, a screen door?

A A storm door, yes.

Q When did you purchase the premises?

A I believe I said it was May or June.

Q You are right, you did say that.

This first door, namely, the aluminium or metal door which you say has a pane of glass or did you say that it had a pane of glass or screen on it?

MR. DeCICCO: Could you read that back?

(Question read)

MR. CORCORAN: I will withdraw the question.

Q The first door, the metal door that you described as being aluminium, did that have a pane of glass in it or a screen?

A It had a pane of glass.

Q This pane of glass, what was the size of it which was in this aluminium door?

A I have no idea.

Q Can you give us an approximation?

MR. DeCICCO: Off the record for just a minute.

(Discussion off the record)

Q We are referring to the first door which we have described as the metal door and which you say contained a pane of glass.

A The first door, the metal door had two panes of glass.

Q The metal door had two panes of glass?

A Yes.

Q Will you describe these panes of glass.

Can you tell us their size?

A 3 x 3. I really cannot tell you the exact measurements.

Q Give us your best judgment.

A They were square panes.

Q 3 x 3?

A They may have been 4 x 4, I don't know for sure.

Q Were both panes of glass in that metal door the same size?

A Approximately.

Q So you would have two panes of glass approximately 3 x 3?

SALLY SHELKIN, C.S.R.

A Yes.

MR. DeCICCO: Or 4 x 4.

A (Continuing) Whatever the measurement might be.

Q With respect to these two panes of glass, tell us their location. Is one on top of the other or is one alongside of the other?

A One was on top of the other.

Q What would you say was the overall height of this metal door?

A The size of the doorway.

Q The overall height would be how much?

A I would have to approximate.

Q Yes.

A About 80 inches.

Q Six feet eight inches?

A Yes.

Q What would you say the width is?

A 32 or 36 inches wide.

Q These two panes of glass, the two panes that we have been referring to in the metal door, which you have described as being one over the other, is there any object separating these two panes of glass?

A I don't understand your question.

SALLY SHELKIN, C.S.R.

Q You have one pane here and another pane below it. Is there anything between the two panes?

A Yes.

Q What is it?

A The metal of the door.

Q Excuse me.

A The metal of the door.

Q This metal of the door which separates the two panes of glass, how wide is that strip of metal?

A I have no idea.

Q Approximately an inch or two inches?

MR. DeCICCO: Objection.

A It is probably about four to six.

Q When you say four to six, do you mean four to six inches?

A Yes.

Q That metal strip that separates the two panes of glass, would that be the full width of the glass?

MR. DeCICCO: Note my objection to the form of the question.

A I don't understand the question either.

Q Realizing if you will, Mr. Rapella, you have described two panes of glass, one over the other. You

SALLY SHELKIN, C.S.R.

have also informed us that there is a metal strip some four to six inches in width that separates the glass.

A Yes.

Q Does that strip go completely across the door?

MR. DeCICCO: Note my objection to the form of the question.

A I cannot describe the door. It is an aluminium door. I don't understand the question.

Q You have told us that the size of these panes of glass in the metal door are 3 x 3 or 4 x 4.

We are using your figures.

We are not holding you to the precise figures, this is an approximation.

Now, you told us that these two panes of glass, one on top of the other are approximately 3 x 3 or 4 x 4 foot, roughly. Now, what I want to know is this: This metal strip which separates the top pane of glass from the bottom pane of glass, what is the length or width of that strip?

A The length of the door I would imagine.

Q When you say the length of the door, you mean the width of the door?

A Yes.

SALLY SHELKIN, C.S.R.

Q Tell us, please, how are these panes of glass in the metal door held in place.

MR. DeCICCO: If you know.

A By metal cips.

Q How many metal clips would be there on, let's say, the top pane?

MR. DeCICCO: Are you referring to the time of the accident?

MR. CORCORAN: Yes.

MR. DeCICCO: His question refers to the time of the accident.

A Four, I believe.

Q How many metal clips would be on the bottom pane?

A Four.

Q Would you describe, please, the metal clips that you are referring to?

A Describe the clip?

Q Yes.

A In what manner, in length, size, material or what?

Q Describe it as best as you can.

A I believe it is aluminium, it is maybe a half inch by 3/4 of an inch. It has a screw that goes into the

SALLY SHELKIN, C.S.R.

side of the door and it is tightened into the door. It holds the frame in securely.

Q To hold the frame in securely?

A Yes.

Q These metal clips, are they round in shape or are they of an L-shape or what?

A I guess they are oblong.

Q Does one part of the clip rest against the pane of glass?

A No.

Q When you describe the aluminium clip as being one half inch by three-quarters of an inch, what is the one half inch?

A The width.

MR. DeCICCO: For the record, I think the witness' testimony is that he guessed it was aluminium. He is not giving any description of the composition. He described it as a metal clip.

MR. CORCORAN: He said that it was aluminium.

MR. DeCICCO: He said that it may have been aluminium.

He said he was not sure.

Q The one half inch is the width of the clip?

SALLY SHELSIN, C.S.R.

A Yes.

Q What is the three quarters of an inch?

A The length.

Q Is this clip that you described, is it flat?

A No.

Q What shape is it?

A It is an odd shape, I cannot describe it.

Q Is it the shape of a right angle?

A There may be an angle on it, I don't know if it is a right angle.

Q Visualize if you will, Mr. Rapella, what a right angle is or what an L would be.

Is it in that shape or is it flat or what?

A I don't remember.

Q Can you tell us what type of angle it was?

A I don't remember. I don't think I could.

Q Where were these clips located with respect to the top pane of glass?

A Repeat the question, please?

MR. CORCORAN: Read it back.

(Question read)

A I believe on the top, bottom and two sides.

Q With respect to the cli. that you say was

SALLY SHELAN, C.S.R.

located on the top, located at the top of the top pane of glass, where with respect to the width was the top clip located?

MR. DeCICCO: I don't follow the question.

A Neither do I.

MR. CORCORAN: Off the record.

(Discussion off the record)

A (Continuing) In the center of each side.

MR. DeCICCO: When you say each side, you are referring to the top, bottom, left and right sides?

THE WITNESS: Yes.

Q Tell us, please, how the bottom pane of glass was held in.

A The same way.

Q How many clips?

A Four.

Q A short time ago your counsel injected the statement that you were not sure whether it was metal or something else and --

MR. DeCICCO: My statement was that he wasn't sure whether it was aluminium or not. He described it as metal.

MR. CORCORAN: I see.

SALLY SHELKIN, C.S.R.

Q Do you know if it was plastic?

MR. DeCICCO: Objection, it has been asked and answered.

MR. CORCORAN: I am waiting for an answer.

MR. DeCICCO: I direct him not to answer the question. He said it was metal. He did not know if it was aluminium or not.

Q From whom, Mr. Rapella, had you purchased the premises on June 4, 1973?

A Andredy.

Q What was his first name?

A Amelia Andredy.

Q Is was a woman?

A Yes.

Q Spell Andredy, please.

A A-n-d-r-e-d-y.

Q When you purchased the premises, Mr. Rapella, on June 4, 1973, did you make an inspection of the house?

A Yes.

Q Was that before title closing on June 4, 1973?

A Yes.

Q When before?

SALLY SELKIN, C.S.R.

A I beg your pardon?

Q How long before the closing?

A I don't know.

Q Do you know the date?

A No.

Q Approximately?

A No, I do not.

Q Was it a few days before or a week before?

A I told you that I cannot recall.

Q Did you make the inspection before the title closed on June 4, 1973?

A Yes, I did. I did make an inspection before.

MR. DeCICCO: Off the record.

(Discussion off the record)

Q What did the inspection consist of?

A Going through the house.

Q Tell us, please, when you say you made an inspection, will you tell us what part of the structure or building you inspected?

MR. DeCICCO: And also describe how you inspected it.

A I looked at the outside of the building, the roof, the cellar and heating system. I also looked at the

SALLY SHELKIN, C.S.R.

size and shape of the rooms.

Q Did you look at anything else?

A Not that I can recall.

Q Was this metal door that you have been describing, was that on the premises when you purchased the house on or about June 4, 1973?

A Yes.

Q I take it then that you did not look or inspect that door.

MR. DeCICCO: Objection. I object to the form of the question.

Don't answer that.

Q You stated that you --

Well, did you inspect the door?

A No. I used it, I entered the house through it.

Q But you did not inspect it?

A I guess not.

Q At the time that you purchased the premises on or about June 4, 1973, were the two apartments rented?

A No, they were not.

Q You bought the property vacant, is that what you did?

A No, I did not.

SALLY SHELKIN, C.S.R.

MR. DeCICCO: I object to the form of the question. Tell us, please, what part of the premises on June 4, 1973 were rented.

THE WITNESS: The upstairs apartment was rented.

Q And the downstairs apartment was vacant?

A Yes, it was.

Q Tell us what was the name of the tenant in the upstairs apartment?

A John Horgan.

Q When was the downstairs apartment rented?

MR. DeCICCO: At what time, sir?

MR. CORCORAN: After he purchased the building.

MR. DeCICCO: Why don't you ask him first if it was.

Q I think you told us that the downstairs apartment was vacant when you purchased the house?

A Yes.

Q Was it thereafter rented?

A Yes, it was.

Q When?

A August 15th.

Q Of 1973?

SALLY SHELKIN, C.S.R.

A Yes.

Q From the time that you purchased the premises on or about June 4, 1973, up until July 29, 1973, did you ever have an occasion to enter the premises by the front door?

A Yes.

Q How many times had you entered or left the premises by the front door between June 4, 1973 and July 29, 1973?

A Several times.

Q When you say several times, is that two or three or 100 times?

A I did not count the times that I went in and out of the door.

Q Well then, between June 4th and July 29, 1973, approximately some seven weeks, having that in mind, can you tell us how many times you entered and exited the premises at 319 McCabe Avenue from the front?

A I cannot give you a definite number.

MR. DeCICCO: Can you give us an estimation or if you don't recall, just say so.

A (Continuing) I don't recall.

Q Could it have been at least once a week?

SALLY SHELKIN, C.S.R.

A It could have been.

Q During this period from June 4th through July 29, 1973, what was your purpose or object in going into the premises? Was it to rent the downstairs apartment?

MR. DeCICCO: Note my objection to the question. I think it is totally irrelevant.

MR. CHARLES: It calls for the operation of the witness' mind.

Q You have estimated that it could have been once a week that you visited the premises and used the front door at 219 McCabe Avenue, between June 4th and July 29, 1973, is that correct?

A It could have been once a week, yes.

Q Could it have been more?

A Yes.

MR. DeCICCO: Could it have been less?

THE WITNESS: No.

Q During the period from June 4th to July 29, 1973, that downstairs apartment remained vacant?

A Yes.

Q During that period, did you bring prospective tenants to visit the premises?

A No, I did not.

SALLY SHELKIN, C.S.R.

Q You had a real estate agent do that for you?

MR. DeCICCO: Objection.

MR. CHARLES: Objection.

Q Was the downstairs apartment shown to any prospective tenants between June 4th and July 29, 1973?

MR. DeCICCO: To your knowledge.

A Not that I recall, no.

Q During that same period of June 4th through July 29, 1973, inclusive, to the best of your knowledge, you visited the premises and utilized the front door at least once a week.

Did you visit or talk with the tenant, John Horgan, or his wife?

MR. DeCICCO: Is your question on each and every occasion?

THE WITNESS: I don't understand the question.

MR. DeCICCO: Why don't you break that down to a single question.

MR. CORCORAN: I will accept that, Mr. DeCicco.

Q Mr. Rapella, you have told us that you visited the premises 319 McCabe Avenue between June 4, 1973, the date of the purchase and July 29, 1973 at least once a week?

SALLY SHELKIN, C.S.R.

A Yes.

MR. CHARLES: I object. That is not his testimony.

MR. DeCICCO: I think he said it could have been or it could have been more.

Q But not less than once a week during that period, is that correct?

A Yes.

MR. CORCORAN: Then I think my question would be accurate?

MR. CHARLES: I will withdraw my objection.

Q Am I correct in my understanding that when you visited the premises at least once a week or possibly more than once a week between June 4th and July 29, 1973, you used the front entrance door?

A Yes.

Q On these occasions that we have described, where did you go when you went into the premises?

MR. DeCICCO: Note my objection to the question. I think it is, first of all, too broad and secondly, irrelevant. If you can give us any answer to that, then do so.

A If I own the house, I would walk into the house.

SALLY SHELKIN, C.S.R.

I could have gone there to collect the rent, I could have gone there to clean out the downstairs apartment. I could have gone there for several things.

MR. DeCICCO: Sir, do you have any specific recollection on why you went into the house?

THE WITNESS: No.

It could have been for a number of things.

MR. DeCICCO: Don't speculate. If you don't know, say so.

Q Did you personally collect the rent from the tenant John Horgan?

A Yes.

Q So that would be one of the reasons for you going there, is that right?

A Yes.

Q How often did you collect the rent from Mr. Horgan?

A Once a month.

Q Did you personally collect the rent for the June 1973 period?

A Yes, -- let me withdraw that.

I believe that I did not collect June, I think I collected July. I don't remember.

SALLY SHELDON, C.S.R.

Q But you do recall collecting the rent from Mr. Horgan in July of 1973?

A Yes.

Q Was that on or about the 1st of July?

A I don't remember.

Q Was it prior to July 29, 1973?

A Yes.

Q On these occasions when you visited the premises and used the front door between June 4, 1973 and July 29, 1973, was that metal or aluminium door on the premises?

A Yes.

Q On these occasions of your visits through the front door, was this metal door unlocked?

A Yes.

Q Tell us, please, did this metal door open out into the porch or into the house?

A Out into the porch.

Q These visits that we are talking about from June 4th to July 29, 1973, that was in the summertime, is that correct?

A Yes.

Q On these visits that you made in that period, was the second or wooden door open or closed on these

SALLY SHELKIN, C.S.R.

occasions?

MR. DeCICCO: Note my objection. I don't know if you can ask a blanket question like that.

MR. CHARLES: If he can testify that it was in the same condition --

MR. DeCICCO: Ask him if he has any recollection.

MR. CORCORAN: He can answer it to the best of his recollection.

A To the best of my recollection, it was open.

Q That is the second door, the wooden door?

A Yes.

Q The first door, the aluminium or metal door, that was closed?

A Yes.

Q How long would you remain on the premises on these visits, approximately?

A I don't think I can answer that question. It varied.

Q An hour or more?

A It may have been.

Q There came a time then when you would leave the premises?

A Yes.

SALLY SHELKIN, C.S.R.

Q How would you leave, through the front door?

A Yes.

Q Tell us, please, how you would open that front door upon leaving the premises?

MR. DeCICCO: Is your question directed to the mechanism of opening the door?

MR. CORCORAN: Yes.

A Just open the door and walk out.

Q When you say open the door, what would you do with your hands?

A Put it on the latch and open the door.

Q When you put your hands on the latch, what did you do with the latch?

MR. DeCICCO: Do you understand the question?

THE WITNESS: No.

Q You say you put your hand on the latch?

A I put it on the doorknob and I pushed down and go out.

Q What did you push down?

A I pushed down on the lever.

Q What is the lever made out of?

A I have no idea.

Q How big was this lever?

SALLY SHELKIN, C.S.R.

A I have no idea.

Q When you would pushdown on the lever, would that automatically open the door?

A Yes.

Q Or would you have to push the door out?

A It went out automatically.

Q Did it have a spring that pushed it out?

A I don't understand the question.

Q You told us that you pushed down on the lever and when you pushed down on the lever, the door opens up automatically.

A You have to push down on the handle.

Q With respect to this lever which you say you pushed down, do you also turn it, let's say, from right to left like a doorknob?

MR. DeCICCO: Or from left to right.

A I think it works both ways, I am not sure. I don't know if it works up and down or in and out.

Q Mr. Rapella, I assume you know that ordinarily you turn a doorknob?

A Yes. But, this was a lever.

Q You have told us that you pushed the lever down?

A I pushed it down or pushed it up and it opens either

SALLY SHELKIN, C.S.R.

way.

Q You don't have to turn it like a knob from left to right?

MR. DeCICCO: Or from right to left.

A I really don't remember, I think it is up and down.

Q You either push the lever down or push it up?

A Or push it in, I don't recall.

Q You don't have to turn it like a doorknob?

A No, it is not a doorknob.

Q We have three possibilities.

You either push it down or push it up or push it in, is that right?

A Yes.

Q On any of the occasions that you used the front entrance between June 4th and July 29, 1973, to enter or exit from the front door, did you have any difficulty with the lever or the catch or the lock on the door?

A No, I did not.

Q The latch or the catch that was connected with the lever, did you ever have to jiggle it in any way so as to open the door?

A No, I did not.

MR. DeCICCO: Note my objection to that

SALLY SHELKIN, C.S.R.

question. It has been asked and answered already.

Q Do you know what type of glass was in the top and bottom panes of glass which were in this metal door?

A No, I do not.

Q I am asking with reference to the time that you purchased the premises on June 4th up until July 29, 1973.

You don't know the type of glass that was in the door?

A No, I do not.

Q Are you familiar with glass at all?

A No.

Q Do you know what annealed glass is?

A No.

MR. DeCICCO: Note my objection to that question. This witness is not an expert on glass. I will not let him answer those questions.

Q Are you familiar with a glass known as tempered glass?

A No.

Q Were you informed of an accident which occurred to an infant by the name of Dawn Donohue on or about July 29, 1973?

SALLY SHELKIN, C.S.R.

A What do you mean by informed?

Q Did somebody tell you or were you there?

A I was there.

Q You were at the premises at the time of the accident?

A Yes.

Q You said you were at the premises 319 McCabe Avenue, Bradley Beach, on July 29, 1973?

A Yes.

Q What day of the week was that?

A I don't know. But I believe it was on the weekend.

Q Did you witness the accident?

A No, I did not.

Q When you say you were at the premises on July 29, 1973, were you in the building?

A No.

Q Tell us, please, what you mean when you say you were at the premises on July 29, 1973.

A I was in the rear of the building, in the backyard.

Q Where had you come from prior to being in the backyard on July 29, 1973?

A When?

Q Where had you been that morning?

SALLY SHELKIN, C.S.R.

A I don't recall.

Q Had you come from Leonia that morning?

A No.

Q Had you come from Leonia the day before?

A No.

Q When had you come to Bradley Beach referable to July 29, 1973?

A I cannot tell you the specific time.

Q Were you there a week before?

MR. DeCICCO: Note my objection. I don't think there has been any testimony --

MR. CORCORAN: Off the record.

(Discussion off the record)

A I have a summer home in Avon, it is the next town.

Q You have informed us that you were at the premises 319 McCabe Avenue on July 29, 1973?

A Yes.

Q You have also told us that you did not witness the accident?

A Right.

Q You further informed us that you were in the rear of the building at the time of the accident?

A Yes.

SALLY SHELKIN, C.S.R.

Q When did you come that day to the premises known as 319 McCabe Avenue?

A I don't recall.

Q Do you know if it was in the morning or in the afternoon?

A I don't recall.

Q Could it have been after 4:00 o'clock on July 29, 1973?

A No, it was before that.

Q Well, was it before, let's say, 12:00 o'clock noon?

A It could have been.

Q Could it have been as early as 10:00 o'clock in the morning?

A It may have been, I don't know the exact time I got there.

Q How far is Avon from Bradley Beach?

A As far as blocks, miles, or time?

Q You tell us.

A Five minutes by car.

Q Tell us in measurements because the car could be going 100 miles an hour or ten miles an hour --

MR. DeCICCO: Note my objection. Do you know

SALLY SHELKIN, C.S.R.

in mileage how far it is from Avon to Bradley Beach?

THE WITNESS: Two miles.

Q Did you come to Bradley Beach on July 29, 1973 from your home in Avon by automobile?

A Yes.

Q Where did you park your car?

A I don't recall.

Q When you parked your car, what was the next thing you did with respect to the premises 319 McCabe Avenue?

A I don't recall.

Q You got out of your car, of course, is that right?

A Yes.

Q Did you walk to 319 McCabe Avenue from your car?

A I may have gone to 319 or 317.

Q Do you own 317 McCabe Avenue also?

A Yes.

Q When you were in the back of the premises 319 McCabe Avenue, you are unable to tell us whether it was 10:00 o'clock, 4:00 o'clock or whatever hour it was?

MR. CHARLES: I will object to that. That is not his testimony.

Q Can you give us any reasonable approximate time

SALLY SHEFFIN, C.S.R.

that you know of?

MR. DeCICCO: The witness said he does not know.

A I really don't recall, I cannot give you the definite hour.

Q When did you first learn that an accident occurred to this infant child, Dawn Donohue?

A When did I learn?

Q Was it the same day or later?

A I was there when I heard the glass break.

Q What glass are you referring to?

MR. DeCICCO: First of all, did you see any glass break?

THE WITNESS: No.

MR. CORCORAN: Mr. DeCicco --

MR. DeCICCO: You are going into areas --

MR. CORCORAN: You will have a right to examine him after I finish.

You are prompting the witness.

MR. DeCICCO: I take exception to your statement that I am prompting the witness.

Q You told us that you heard glass breaking?

A Yes.

SALLY SHELKIN, C.S.R.

Q Now, I am asking you, when you heard the glass breaking were you in the rear of the building in the backyard?

A Yes.

Q Did you later learn that the glass that broke was the glass that was on the glass door in the front?

A Yes.

Q On the metal door?

A Yes.

Q What did you do after you heard the sound of glass breaking? What did you do?

A I walked towards the front of the building.

Q Did you go around the side of the building where the porch was or on the other side?

A I don't recall.

Q Tell us what you saw when you came to the front of the building?

A I saw a lot of people.

Q Where were these people?

A On and about the porch.

Q Did you see the infant, Dawn Donohue, this young child sitting here? (Indicating)

A No, I did not.

SALLY SHELKIN, C.S.R.

Q Did you see anyone that was bleeding?

A No.

Q Did you inquire as to what the people were doing there?

A Yes.

Q What were you told?

MR. DeCICCO: Note my objection. That would be purely hearsay as to anything this witness was told.

I direct him not to answer.

MR. CORCORAN: Off the record.

(Discussion off the record)

MR. DeCICCO: Note my specific objection to the question and I am preserving all my rights to object to it at the time of trial.

But if the witness recalls what he was told, he is directed to answer it.

MR. CORCORAN: Can I have the question repeated, please.

(Question read)

A That somebody got hurt.

Q Did you see a police car there?

A Yes.

SALLY SHELKIN, C.S.R.

Q Did you see an ambulance arrive?
A Yes.
Q Did you see the child being transferred from the police car to the ambulance?
MR. CHARLES: Objection.
MR. DeCICCO: I don't think there is any testimony about any child in a police car.
The only testimony was that he did not see a child.
Q Did you at any time while at the premises on that day see anyone who you were told got hurt?
A I don't understand the question.
Q When you were told that somebody gut hurt, were you told that it was a child or an adult?
A Just that somebody got hurt.
Q Did you go on the porch at any time that day?
A Yes.
Q Was that after the breaking of the glass?
A Yes.
Q Did you see the glass?
A Yes.
Q Was the glass splattered around on the porch?
A Yes.

SALLY SHELKIN, C.S.R.

Q Were both panes of glass broken?

A No.

Q Which pane was broken?

A The bottom.

Q Mr. Rapella, did you clean up this glass that had broken?

A Yes.

Q What did you use to clean it up?

MR. DeCICCO: Note my objection to that question. That question is irrelevant.

Q What did you use, a broom or --

A I used a broom and dust pan.

Q How large were the pieces of glass that you picked up?

MR. DeCICCO: Objection. Note my objection to that question.

I don't think there has been any preliminary or foundation laid for that question.

Q You have told us that you picked up the glass, the broken glass by means of a broom and dust pan?

A Yes.

Q Will you describe these pieces of broken glass that you picked up?

SALLY SHELKIN, C.S.R.

A The nature of them or the size?

Q The size.

A It was just broken glass.

Q Tell us some of the lengths of the glass.

A I don't know, some were three inches and some were four inches. Some were small pieces also.

MR. DeCICCO: Mr. Rapella, do you recall the sizes?

THE WITNESS: Not really. I am trying to answer his question.

MR. DeCICCO: Don't answer the question by guessing or assuming. State what you know.

Q You told us that you picked up these pieces of glass and you described some of the sizes of the glass that was broken.

You say some of the pieces were three inches long and some of the pieces were four inches long. Would you say that there were any that were six inches?

A I really don't recall. I am just guessing.

Q None of the pieces were, let's say, as small as a half an inch or quarter of an inch, would you say that?

A I cannot recall.

MR. DeCICCO: Note my objection.

SALLY SHELKIN, C.S.R.

Q Were they of different shapes?

A There again, I am just guessing.

Q Were some of these pieces of a triangular shape? Were some of them oblong and were some of them square?

A I don't recall the sizes.

Q Do you know if any of the pieces of the glass that you picked up were as long as ten or 12 inches long?

MR. DeCICCO: Objection. It has been asked and answered.

MR. CORCORAN: I have a right to probe.

A I don't recall.

Q Did you pick up any of the glass with your hands?

A I don't recall.

Q After you used the broom and dust pan to pick up the glass, where did you place the glass?

MR. DeCICCO: I think it is totally irrelevant and I object to it.

A In some sort of trash, I believe.

Q When you say trash, do you mean a trash can?

A It may have been a trash can or a box.

Q Was that trash can or box, was that on the premises of 317 or 319 McCabe Avenue?

MR. DeCICCO: Objection. It is totally

SALLY SHELKIN, C.S.R.

irrelevant.

A It was around the property.

Q Which property?

A 319.

Q Was it a wooden box or a cardboard box or what?

MR. DeCICCO: Note my objection to it. It may have been a box or a container of some sort.

Q I said was it a wooden box or a wooden container?

A I don't recall.

Q Do you have any of that glass at the present time?

A Do I have any of the glass that broke?

Q Yes.

A No.

Q Did you give any portion of that broken glass to anyone?

A No.

Q Did you have this glass tested by anyone?

A No.

Q Is there a means by which you or anyone representing you can produce this glass?

A Not that I know of, no.

Q Now, this box or trash can, whether it was

SALLY SHELKIN, C.S.R.

wood or metal, was that the usual container to use for the garbage and so forth?

MR. DeCICCO: Note my objection.

A I believe so.

Q Did you observe the thickness of this glass?

A No, I did not.

Q Besides 317 and 319, do you own any other premises in Bradley Beach?

MR. DeCICCO: Note my objection to that question. It is totally irrelevant.

A No.

Q Was this glass that you picked up with the broom and dust pan, was that similar to the type of glass that are in the windows of the house?

MR. DeCICCO: Note my objection. I don't know what this witness' qualifications are in that regard.

Q Will you answer the question, please.

MR. CHARLES: If you know.

A I don't know if it is the same type of glass that is in the windows.

Q You know the windows that are in a house, right?

A Yes.

Q It is of a certain thickness?

SALLY SHELKIN, C.S.R.

A I cannot answer that, I do not know.

Q Have you seen glass that has been put in windows of a private home?

MR. DeCICCO: Note my objection to the question.

A Have I seen?

Q Yes.

A Yes.

MR. DeCICCO: Are you talking about this house or a skyscraper or what kind of house are you talking about?

The question is unanswerable.

Q Mr. Rapella, have you had an occasion to replace any windows in this house or any other house that you own?

MR. DeCICCO: Note my objection.

A On this particular house, no.

Q On any other houses that you own?

A No.

Q You never had any glass replaced?

A You asked me if I ever had glass replaced, yes. But I never did it myself.

Q What premises had you had glass replaced in?

MR. DeCICCO: Note my objection to that.

SALLY SHELKIN, C.S.R.

The question is totally irrelevant.

Q What premises had you had glass replaced in?

MR. DeCICCO: Objection. I direct the witness not to answer.

Off the record.

(Discussion off the record)

Q Tell me, Mr. Rapella, when you say you had glass replaced in your private home, do you mean your home in Leonia or your home in Avon?

A My home in Leonia.

Q Was that done by a glazier?

A Yes.

Q Did you observe the thickness of that glass that was put in?

A No.

Q The glass that was put in in your home in Leonia, that was put in a window of your home?

A Yes.

Q Glass in a window of your house?

A I don't understand.

Q In your house in Leonia, there are windows?

A Yes.

Q In those window frames, there are window panes

SALLY SHELKIN, C.S.R.

of glass?

A Yes.

Q Did you ever observe the thickness of the glass in the window frames in your home in Leonia?

A No, I did not.

Q I am talking about the glass that is in a door, do you understand what I am talking about? The difference between the glass in a door and the glass in a window.

MR. DeCICCO: Note my objection to counsel's characterization.

I don't think he is an expert in glass.

Q Will you tell us, please, if you know, if the glass that you picked up with the broom and dust pan at 319 McCabe Avenue on July 29, 1973, which had come from the bottom pane of glass in the front metal door of that house, was the thickness of that glass, the same thickness of the glass in your home, in the windows of your home in Leonia?

MR. DeCICCO: Note my objection to the question.

A I don't know.

Q Do you know who put that glass initially in

SALLY SHELKIN, C.S.R.

that door?

A No, I do not.

Q Did you buy 317 McCabe Avenue from Mrs. Andredy?

MR. DeCICCO: Note my objection. That has nothing to do with this case. It is totally irrelevant.

A My other property, yes.

Q Were you not told by Mrs. Andredythat a tenant in her premises put that glass in?

MR. DeCICCO: Note my objection to the form of the question. I direct the witness not to answer it. Rephrase the question, please.

Q Did you at any time after June 4th or prior to June 4, 1973, have a talk with Mrs. Andredy with respect to who put the glass in that metal door on the front of the premises 319 McCabe Avenue?

Just answer the question yes or no.

A No.

Q Do you know if Mrs. Andredy resided across from 319 McCabe Avenue?

MR. DeCICCO: When you say resided across, do you mean at a different address?

SALLY SHELKIN, C.S.R.

MR. CORCORAN: Across the street.

MR. CHARLES: Fix the time, please.

Q Around June or July of 1973.

A No. She did not reside there.

Q Did she own some property there?

A Yes.

Q Did she tell you that a tenant in that property 319 McCabe Avenue, did she tell you that a tenant in that building was the one who put in the glass in that door?

MR. DeCICCO: Note my objection.

Q Did she tell you that?

A No, she did not.

Q When you opened the door to come out of the premises and you used the front metal door, did you notice if the glass in that door was loose?

A No, I did not, no.

Q Did you ever touch it with your hand to see if it was loose or secure?

A No, I did not.

Q Subsequent to July 29, 1973, about a day or two after this occurrence, did you have a talk with Mrs. Donohue, this woman sitting here? (Indicating)

A Did I have a talk with her?

SALLY SHELKIN, C.S.R.

Q Yes.

A No.

Q Tell me, Mr. Rapella, did you ever tell Mrs. Donohue, the plaintiff in this action, that this glass that broke and which you picked up was a cheap glass?

A No, I did not.

MR. DeCICCO: Note my objection to the question.

Q You deny having any talk with the plaintiff, Mrs. Donohue, with respect to the quality of the glass that was in that door?

MR. DeCICCO: Objection. It has been asked and answered.

Q Did you ever tell Mrs. Donohue that the glass pane that broke was loose and you intended to replace it?

A No, I did not.

Q Do you know who Mr. John Horgan is?

A Yes.

Q Who is he?

A He is my tenant.

Q Do you know anything else about the man?

A No.

Q Did you ultimately rent the apartment on the

SALLY SHELKIN, C.S.R.

ground floor?

A After July 29th?

Q Yes.

A Yes, on August 15th.

Q What was that tenant's name?

MR. DeCICCO: Note my objection.

A James and Frances Schreiber.

Q Did you have a tenant by the name of Tucci?

A No, I did not.

Q Did you know anybody by that name?

A No.

Q Prior to July 29, 1973, did you receive any complaints from Mr. or Mrs. Horgan with respect to the latch on that front metal door?

A No, I did not.

Q Did they ever tell you that it constantly or frequently became stuck?

A No.

MR. DeCICCO: Note my objection to that question. The question has been asked and answered.

Q Was the glass that broke ultimately replac. ?

A Yes.

Q When was that done?

SALLY SHELKIN, C.S.R.

MR. DeCICCO: Note my objection to that question. If the witness can answer, he may do so.

A I believe it was the day after.

Q You say the day after, do you mean the day after July 29, 1973?

A Yes.

Q That is the day after the accident?

A Yes.

Q Did you do this yourself or did you have someone do it for you?

A I had someone do it for me.

Q What is the name of the fellow that did it for you?

A The Foster Awning Company.

Q Where are they located?

A Bradley Beach.

Q Did the Foster Awning Company replace both panes of glass or just the bottom one?

MR. DeCICCO: Note my objection as to the subsequent repairs. I don't think under the Federal rules you are entitled to that.

Q Did you get a bill from the Foster Awning Company?

SALLY SHELKIN, C.S.R.

A Yes.

Q Do you have that bill with you?

MR. DeCICCO: Objection.

Q Where is the bill?

MR. DeCICCO: Objection.

A I have no idea.

Q Did you pay them by cash or check?

A Cash.

Q How much did you pay?

MR. DeCICCO: Objection.

A I don't recall.

Q Were you present when the glass was replaced?

A Yes.

Q Did you see the thickness of the glass?

MR. DeCICCO: Objection.

A No, I did not.

Q Was the glass that was replaced, the glass that replaced the broken glass, was that cut to size at the premises 319 McCabe Avenue or had it been brought to your premises already cut to the proper size?

MR. DeCICCO: Note my objection to the question.

Q You have told us that the Foster Awning Company replaced the glass?

SALLY SHELKIN, C.S.R.

A Yes.

Q In addition to that, you told us that you were present when the glass was replaced?

A Yes.

Q Now, my question is, that glass that was replaced, had it been already cut to size before it was brought to your premises or did they cut it with a glass cutter at your premises?

A I really don't remember.

Q You don't know or you don't recall?

A I don't know how it was done.

Q Were you watching the man do it?

A No, I was not.

Q Where were you when the glass was replaced?

MR. DeCICCO: Note my objection.

A I don't recall.

Q You told us you were there, that is the reason I am probing into this thing.

You said you were there on the occasion when the glass was replaced.

A You asked me where was I when it was cut. I wasn't there when the glass was put in the frame.

MR. DeCICCO: He said he was there when it

SALLY SHELKIN, C.S.R.

was replaced, not when it was put in the frame.

Q The Foster Awning Company replaced the glass?

A Yes.

Q The day after the accident?

A Yes.

Q You said you were there at the premises when the glass was replaced, is that true or not?

MR. DeCICCO: I think he said he was there when the glass was replaced.

A When the glass was replaced in the frame or in the door? I am not sure of what you are talking about.

Q Were you present when the glass was replaced in the frame?

A In the frame, no.

Q Were you present when the glass was replaced in the door?

A Yes.

Q When the glass was replaced in the door, were you observing that operation?

A Yes.

Q You were standing on the porch?

A Yes.

Q When the glass was replaced in the door, had it

SALLY SHELKIN, C.S.R.

already been put in a frame?

A Yes.

Q Was that a wood or metal frame?

A It was the same frame.

Q Were you present when the man from the Foster Awning Company arrived?

A No.

Q Do you know if he brought the glass with the frame in from his shop?

A He did not bring it from his shop.

Q Where did he bring it from?

A I picked it up.

Q Where did you pick it up?

A At his company.

Q You picked up a pane of glass from the Foster Awning Company?

A Yes.

Q Was it that day or the next day?

A The next day.

Q Then, what did you do with it?

A I replaced it into the door frame.

Q You did it yourself?

A Yes, I did.

SALLY SHELKIN, C.S.R.

Q I had the impression that the Foster Awning Company replaced it.

MR. DeCICCO: That is not his testimony.

Q When the glass was put back in the door, you did that?

A The replacement glass was done by the Foster Awning Company. The frame was replaced by me.

Q Was this aluminium?

A No.

Q Was it the same frame that was there before?

A Yes.

Q Had the frame fallen out?

A No, it did not.

MR. DeCICCO: Objection.

Q Why was it necessary to replace the frame?

MR. DeCICCO: Objection. There has been no testimony that he replaced the frame.

Q On the following day, the day following the accident of July 29, 1973, is it true that you went to the Foster Awning Company and picked out a piece of glass?

A No, I did not.

MR. DeCICCO: I object to the form of the question.

SAL Y SHELKIN, C.S.R.

Q What did you do?

A When?

Q When you went to the Foster Awning Company.

MR. DeCICCO: Objection. It is all subsequent repairs and I object to it.

MR. CORCORAN: You can object to it. But the witness can answer it.

MR. DeCICCO: I don't believe so.

MR. CORCORAN: Then we will mark these questions and get rulings on them.

Q Tell us about the Foster Awning Company. Did you purchase the glass that was to replace the broken glass from the Foster Awning Company?

A Yes.

MR. CORCORAN: Off the record.

(Discussion off the record)

Q How much did you pay the Foster Awning Company?

MR. DeCICCO: Objection.

A I don't recall.

Q Did you select the glass or was it selected by the Foster Awning Company?

MR. DeCICCO: Objection. But you can answer.

A They selected it, I would imagine.

SALLY SHELKIN, C.S.R.

Q Did they come to the premises 319 McCabe Avenue to measure it?

A No.

MR. DeCICCO: Objection. There has been no such testimony.

Q Did you give the measurements to the Foster Awning Company?

A No.

Q How did the Foster Awning Company know the size of the glass which had to go back in the door?

MR. CHARLES: Objection. It calls for the operation of the witness' mind.

Q Did anyone inform the Foster Awning Company as to the size of the glass?

A I don't know.

MR. DeCICCO: Objection.

MR. CORCORAN: Off the record.

(Discussion off the record)

Q On the day following this accident, July 29, 1973, did you bring the frame of the door, the metal door from which the glass had broken the day before, did you bring that frame to the Foster Awning Company?

MR. DeCICCO: Off the record.

SALLY SHELKIN, C.S.R.

(Discussion off the record)

Q Did you bring the glass frame to the Foster Awning Company?

A Yes.

Q Was that glass frame metal?

A Yes.

Q Had you removed it from the door?

A Yes.

Q How did you removed the glass frame from the door?

A Whatever clips there were, I loosened them and took it out.

Q You brought the metal frame down to the Foster Awning Company and they put in a piece of glass to insert it in this metal frame?

A Yes.

Q Then did they return to the premises 319 McCabe Avenue or did you personally put the glass frame with the glass in it back into the door?

A No, they did not return to 319. I picked it up and replaced it myself.

Q How was the glass held in the metal frame?

A By metal clips.

SALLY SHELKIN, C.S.R.

Q How was the metal frame inserted into the door?
A It slides into the channel on all sides.
Q How was the metal frame held in that channel?
A It goes into the channel and then the clips go on all corners.
Q I think you told us that there were four clips?
A Yes.
Q Do I understand then that these clips hold the glass in the frame as well as the frame in the door?
A No, they do not.
Q Do I understand then that there are clips that hold the glass in the frame?
A I just said no to that answer.
Q You say that the glass is held in the frame by being inserted in a channel?

MR. DeCICCO: I don't follow that.

Off the record.

(Discussion off the record)

Q Tell us please how the glass is held in the metal frame?
A I cannot answer that, I do not know.
Q Did you observe the thickness of that glass that was furnished by the Foster Awning Company?

SALLY SHELKIN, C.S.R.

MR. DeCICCO: Note my objection.

A No, I did not.

MR. DeCICCO: It has no value or probative value to the prior existing condition.

Q How far away were you in the backyard from the front door when you heard the breaking of the glass?

A The distance of the house.

Q Which would be what?

A An approximation would be about 35 feet.

Q Were you with someone or were you alone when you heard the glass break?

A I was alone.

Q Will you tell us, please, what you were doing at that time if you recall?

A I believe I was doing some gardening in the back.

Q Did you give a statement to anyone as to what you know about this accident?

A Any statement?

I think I gave one to my insurance company.

Q Who was that company?

MR. DeCICCO: Note my objection.

A The Hanover Insurance Company.

Q Did someone from that insurance company come to

SALLY SHELKIN, C.S.R.

your home to interview you or did you go to their office?

MR. DeCICCO: Objection.

Q Please answer the question.

A No, they did not come to me.

Q Did you go to their office?

A No, I did not.

Q Was this statement in writing?

A No, it was not.

Q To whom did you give this statement?

Do you know the name of the person?

A No, I do not.

Q Was it given on the telephone?

A Yes, it was.

MR. DeCICCO: Note my objection to this entire line of questioning.

Q Did you give any written statement to anyone pertaining to this accident?

MR. DeCICCO: Objection. You can answer it.

A No.

Q Did you at any time tell Mr. Horgan or Mrs. Horgan that it was your intent to remedy the defective latch on the door?

MR. DeCICCO: First of all, note my objection

SALLY SHELKIN, C.S.R.

as to any characterization in the question.

Secondly, I think the question has been asked and answered and thirdly, the question does not have a time frame.

Q Prior to July 29, 1973, did you tell Mr. or Mrs. Horgan, the tenants in the premises above, that you had planned to change the lock on that metal door?

A No, I did not.

Q Do you know Mr. Horgan?

A As my tenant, yes.

Q Is he your tenant there now?

A No, he is not.

Q Did you ask him to give you a statement?

A No, I did not.

Q Did anyone on your behalf ask that Mr. Horgan give a statement?

A Not to my knowledge, no.

Q This policy of insurance that you have with the Hanover Insurance Company, is that insurance on the premises 319 McCabe Avenue?

A Yes.

Q Does it also cover 317 McCabe Avenue?

A I don't know.

Q What is the amount of the insurance coverage?

SALLY SHELKIN, C.S.R.

MR. DeCICCO: Note my objection.

A I don't really know. I believe it is --

MR. DeCICCO: If you don't know, you don't know.

Q Do you have your policy at home?

A Yes.

MR. CORCORAN: If we leave a space, you will insert the amount of the insurance policy and the date of it?

MR. DeCICCO: Yes.

THE WITNESS: Yes.

MR. CORCORAN: Off the record.

(Discussion off the record)

Q Mr. Rapella, you have informed us that you heard the breaking of the glass while you were at a distance of some 35 feet away in the backyard.

Did you hear any screams of a child?

A I heard screams, yes.

Q When you came on the porch and you saw the glass broken, did you see blood on the porch?

A I did not come on the porch immediately.

Q You stood in front of the house?

A Yes.

Q There were people on the porch?

A Around, yes. I don't recall where they were.

Q How soon after did you pick up this glass?

A I don't recall in time. It was a short period of time after.

Q Well, when you picked it up, did you notice blood all around the porch?

A Yes, I did.

Q You stated that the glass that broke was replaced the following day?

A Yes.

Q Is it a fact that it was not replaced until a week later?

MR. DeCICCO: Note my objection. It is argumentative.

Q Is it your statement now that it was replaced the day after it broke?

A The day after, yes.

Q You are sure of that?

MR. DeCICCO: Objection. You are being argumentative.

A Not 100% sure, but I am sure.

Q Did you ever have a tenant on the premises 319 McCabe Avenue that occupied the bottom apartment or

the downstairs apartment by the name of Tucci?

MR. DeCICCO: Objection. That is so broad.

Q Did you have such a tenant on July 29, 1973?

A No.

Q Did you have a tenant by that name shortly before that time, July 29, 1973?

A No.

Q Did you have a tenant by that name after July 29, 1973?

A No.

Q Do you keep records of the collection of rents?

A In what form?

Q Well, let's say simply to report your income to the IRS?

A Rent receipts.

Q You do keep a book showing the payment of rents?

A Yes.

Q You have this book at the present time?

MR. DeCICCO: For what year?

Q For the year 1973.

A I may have.

Q What type of book is it? Is it a loose-leaf book or is it a book that pages cannot be removed from?

A It is a rent receipt book.

Q Does it show the names of the tenants in the premises 319 McCabe Avenue?

Does it show the tenants for the year 1973?

A Does it show the names of the tenants?

Q Yes.

A Not all the time, no.

Q Well, would it show the name of Mr. and Mrs. Horgan?

A If they paid me in cash, yes.

Q Well, is there any record that you keep showing the names of your tenants at the premises 319 McCabe Avenue?

A No.

Q You don't keep any records of that?

A No.

Q Do you keep any records showing the amount of rents that were received?

A No.

Q Do you make tax returns?

A Yes.

MR. DeCICCO: Note my objection.

Q In that tax return, do you include the rentals

from 319 McCabe Avenue?

A Yes.

MR. DeCICCO: Note my objection.

Q In inserting these rentals in your tax returns, you make reference to some book or ledger that shows you the amount of moneys you receive?

A No.

Q By what means do you determine the amount of rentals?

MR. DeCICCO: Note my objection to that question as being totally irrelevant.

A My own calculations.

Q You mean from your memory?

A Yes.

Q Some time after this occurrence on July 29, 1973, do you admit or deny that in a talk with Mrs. Donohue, that you informed her that an elderly man who was a tenant of Mrs. Andredy inserted the glass in that metal frame door and you told Mrs. Donohue that it was not break-proof.

Did you ever have such a conversation?

MR. DeCICCO: Note my objection to that question. In addition to that, it has been asked and

answered previously.

A No.

MR. CORCORAN: I have nothing further.

MR. DeCICCO: I have no questions.

_____

Subscribed and sworn to before me

this _____day of _____

\- - -

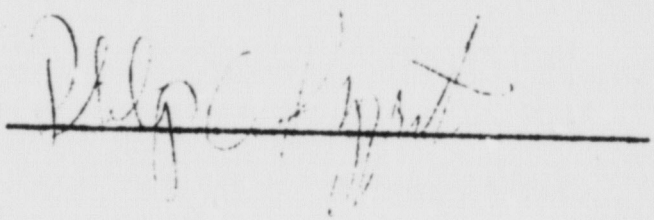
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, PHILIP C. RIZZUTI, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That ALBERT RAPELLA, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by this witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of September, 1975.



AFFIDAVIT OF DOROTHEA DONOHUE IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWN DONOHUE, an infant, by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant

Index No. 75 Civ. 1023 (M.P.)

AFFIDAVIT OF PLAINTIFF DOROTHEA DONOHUE IN OPPOSITION TO MOTION TO DISMISS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DOROTHEA DONOHUE, being duly sworn, deposes and says:

1. I am one of the Plaintiffs in the above action. My daughter, DAWN, who was age 8 at the time of the accident, is the other Plaintiff. I submit this affidavit in opposition to the Motion to Dismiss the case for lack of federal jurisdiction of diversity of citizenship. I am personally familiar with the facts that I will relate to this Court.

2. When my husband, WILLIAM DONOHUE and I were married in September 15, 1948, we took up our residence first in Sullivan County where we lived for about two years. Shortly thereafter, we moved to Manhattan in the neighborhood of West 90th Street and Amsterdam Avenue where the Roman Catholic Church of St. Gregory's florished with a large segment of Catholics of

Irish extraction. When our children were born they were baptized in St. Gregory's Church and received their First Holy Communion and Confirmation. Twenty or more years ago, St. Gregory's was the scene of many activities for parishioners, both young and old. There was an excellent parochial school, wholly supported by the parishioners and most of our children attended and graduated from this school. The only exception was my younger child, DAWN, whom the school was unable to take because it was completely filled. My older child, Patricia, who was then ten years of age was a student in St. Gregory's at the time DAWN had her accident in July 29, 1973. The older girl, Katherine (Mrs. John Horgan) at whose summer home in Bradley Beach, New Jersey, we were visiting when the accident occurred also graduated from St. Gregory School.

My other children, including Patricia, Katherine (Mrs. Horgan) and Stephen each attended St. Gregory and graduated, except Patricia. Patricia was required to transfer from St. Gregory's when I found it necessary to keep DAWN in New Jersey to be near Dr. Jasaitis. All attended Church in St. Gregory's and participated in the social and religious activities offered by the Church and School. The Donohue family was for all intents a "fixture" in this parish and school as became many of the other Catholic families of Irish extraction. Most of the men worked on the West side, some in the longshoremen business of

loading ships and others in the construction field. My husband became a member of the International Union of Operating Engineers, Local 15, located at 265 West 15th Street and worked out of this Local Union on large construction jobs throughout the five boroughs of New York City which comtituted the jurisdiction of this Union which handles cranes, bulldozers and the like. My husband made a good living in construction during the years he was employed and actually was employed for one of the largest national contractors by the name of Kuiwit, Morrison and Company on a job in Staten Island when DAWN suffered her accident in July 1973.

In July 1973 my family and I resided in the Stephen Wise Housing owned and operated by the New York City Housing Authority, located at 124 West 91st Street occupying Apartment 19J for many years. We continued to reside there up through November 1973 despite the fact that DAWN had her accident in July 29, 1973. I remember returning to our apartment after spending two weeks in Bradley Beach, New Jersey, with DAWN who remained with my married daughter, MRS. CATHERINE MORGAN during the first and critical period of her operation and treatment by Dr. Jassitis.

AFFIDAVIT OF DOROTHEA DONOHUE IN OPPOSITION TO MOTION

I cannot say enough for Dr. Jasaitis. It seems to be the grace of God that when DAWN was removed to the Jersey Shore Hospital by ambulance, bleeding profusely and with every nerve and tendon in her wrist severed, Dr.Jasaitis was there to attend to her. Dr. Jasaitis, I later learned was and is a specialist in surgery who treats injuries to the hand, principally, although he also treats cosmetic injuries to the neck. A reading of the hospital chart, I am informed by my attorney demonstrates the great skill possessed by Dr. Jasaitis in this very limited area of surgery, namely the hand. Dr. Jasaitis has been so generous and patient of his time that he is truly a dedicated doctor insofar as my child DAWN is concerned. Naturally, this severe injury caused other injuries to DAWN, chiefly of an emotional and mental nature. For months she would awaken in the night from her sleep and cry continuously until she fell asleep from exhaustion. As a matter of fact, the recent examination before trial of DAWN has re-awakened all of the thoughs of this incident in her mind and DAWN has been experiencing nightmares during the past several weeks. Once she was found by a Police Officer walking around the streets, fearing to go to school to listen to the taunts of her classmates who reminded her of her claw-like hand which she was unable to close.

It was this desperate need to have this highly skilled surgeon and dedicated doctor treat DAWN for the terrible injury she suffered that I was obliged to remain in New Jersey near his office. In the beginning I brought DAWN to Dr. Jasaitis on July 29, 1973, August 7, 1973, August 28, 1973, August 30, 1973, September 14, 1973, October 9, 1973, November 1, 1973, December 1, 1973, December 19, 1973, December 28, 1973 and January 6, 1974. I continued to bring DAWN to his office during 1974. During 1975 the visits continued and they have amounted to six or seven visits;on the last visit Dr. Jasaitis informed me that a further operation was indicated for DAWN and this would depend on the emotional state of the child and whether the pain increases or decreases.

Neither my husband or myself ever lived in New Jersey or worked in New Jersey. Our home is New York City which it has been for 27 years since our marriage. When the operation is either performed or not performed, depending on the decision that Dr. Jasaitis will make on the next visit, I will move back with my two younger children, DAWN and PATRICIA to New York City.

AFFIDAVIT OF DOROTHEA DONOHUE IN OPPOSITION TO MOTION

3. DAWN finished the second year in P.S. 84 at 91st Street between Columbus Avenue and Central Park West, New York City and was planning to enter the third year at P.S. 84 in September 1973, which she did. DAWN remained in Public School 84 in New York City commencing in September 1973 up until November 1973 except for the visits to Dr. Jasaitis in New Jersey. However, the continued treatments required by Dr. Jasaitis made living in New York City difficult as he scheduled two appointments, namely, September 15 and September 24, 1973 and many more in October and November. We continued to keep our apartment at the Stephen Wise Towers, owned by the New York City Housing Authority located at 124 West 91st Street, Manhattan where we lived, my husband and myself and DAWN and PATRICIA. My husband worked in Queens County and Richmond County later on, what I believe is called the Walsh and Perini jobs but was forced to retire in the latter part of 1973 when the progress of his illness prevented him from continuing his work as an operating engineer. My mother-in-law Mrs. Margaret Donohue of 8432 62nd Drive, Middle Villate, in the Borough of Queens, offered to allow us to live with her but my husband's condition became radically worsened and I had to turn down this offer.

During this time my sister-in-law Frances Donohue also offered us the apartment at 8432 62nd Drive, Middle Village where she lived with her mother, as it was too large for her since her mother died. A letter from my sister-in-law "Fran" is attached hereto and marked Exhibit "1".

AFFIDAVIT OF DOROTHEA DONOHUE IN OPPOSITION TO MOTION

4. I disagree with the statement of Mr. Sabino J. Berardino who states in his affidavit at page 2, last paragraph, that I testified that neither my husband or I are registered to vote (page 12, lines 6 to 22). I was under the erroneous impression that Mr. Berardino was questionning me concerning my registration and voting in the State of New Jersey. Of course, that is true that neither my husband nor myself were ever registered in New Jersey, nor did we ever vote in New Jersey.

This erroneous impression was due to the line of questionning of me starting at page 11 of the testimony where I was given the names of the schools my children were attending in New Jersey. This line of questionning continues from page 11 up to the top of page 12 where I testified that I moved to 327 16th Avenue which is in New Jersey. The next question that followed at page 12, line 6 is as follows:

"Q. Mrs. Donohue, in 1973 where you registered to vote?

A. No."

AND CONTINUES

"Q. When was the last time you were registered to vote?

A. When I intend to move back to New York.

MR. DeCICCO: I move to strike that as not being responsive.

Q. When was the last time you were registered to vote?

A. I haven't voted.

Q. In how many years?

A. In a couple of years now.

Q. How about your husband?

A. No.

Q. No, he is not registered to vote now?

A. No, he isn't."

Upon reading the transcript I immediately informed my attorney, William J. Corcoran, of this mistake as I had been under the impression that Philip A. DeCicco, Esq., the Attorney who was questionning me was referring to the State of New Jersey, that State being connected with the last question immediately preceding as to whether I was registered to vote.

I have, of course, corrected the answers on this page in the transcript and to all of these questions, the answer is that I did not register or vote in New Jersey but had registered and voted in New York City along with my husband for many years, having last voted in the City of New York in November of 1972, the year prior to Dawn's accident. As a matter of fact, I was a member of the election board in the District in which I resided and which Board was located at the Public School adjoining St. Gregory's School on West 90th Street, Borough of Manhattan. Accordingly, for the Court's information

AFFIDAVIT OF DOROTHEA DONOHUE IN OPPOSITION TO MOTION

I wish to affirmatively state that my husband and I always registered and voted in New York through 1972 and that we had planned to vote in November of 1973. The accident to DAWN and the serious illness of my husband made this unfeasible.

Mr. Berardino unfortunately gives a wrong impression in his affidavit at the bottom of page 2 when he refers to my answers in the transcript (at page 60, line 4).

4. I definitely stated that I had been asking persons to locate a home for me in New York and that was done as recently as a month and a half prior to the date of the deposition when I visited my mother-in-law, Mrs. Margaret Donohue in Middle Villate, Borough of Queens, City of New York. Although I personally did not go to real estate agents in New York City, I made inquiries of a friend of mine whom I requested to take to real estate agents. I wrote to my friend, Mrs. Dorothy Hollohan of 117 West 90th Street, New York, N. Y. and requested that she inquire of real estate agents and friends where I could relocate in my old neighborhood.

5. In conclusion, I wish to state in opposition to the contention of Mr. Berardino that neither my husband nor myself or family ever regarded the State of New Jersey as our home. We lived in New York State and New York City since our marriage in 1948, a period of over 25 years, most of which was

in the neighborhood of West 90th Street and Amsterdam Avenue. My husband and I and our children always resided in apartment houses and this is the reason why we did not own any property in New York.

As evidence of the fact that my husband and myself and my children regarded New York City as our home even after DAWN's accident on July 29, 1973, is the fact that in September of 1973, DAWN returned to her class in Public School 84, located at 32 West 92nd Street and my daughter, PATRICIA, returned to her class at St. Gregory's Parochial School at 131 West 91st Street, both of which are in the Borough of Manhattan. It was only after the travelling between New York City and New Jersey to visit Dr. Jaisatis became too difficult, that I decided to move temporarily to New Jersey which I did in November of 1973. All of this is recorded in the transcript of my examination taken on September 3, 1975 at page 11.

6. As supplemental proof that my husband and I were residents of New York City is the bill from Dr. Jasaitis covering treatments to DAWN on July 29, August 7, August 21, August 28, August 30, 1973. The Court will respectfully note that the bill was sent to my husband, Mr. William Donahue, 120 W. 91st St., New York City, New York. This, of course, was our address prior to and subsequent to Dawn's accident. The bill of Dr. Jasaitis

covering these treatments is attached hereto and marked Exhibit "2".

As further proof that my husband worked in New York and resided therein is a check dated 12/24/73 from the Welfare Benefit Account, Joint Welfare Fund Engineers Locals 14 & 15, 265 West 14th Street, N. Y., N.Y. made to the order of Joseph E. Jasaitis, M.D. in the sum of $554.50. This check is evidence of my husband's continued membership in the New York City Engineers Union and from which Pension Fund he is now on retiremant. A copy of this check is attached hereto and marked Exhibit "3".

A further piece of evidence substantiating my husband's employment and residence in New York City is the letter from the Joint Welfare Fund of the International Union of Operating Engineers, 265 West 14th Street, New York, N. Y. which was sent to my husband indicating that the Jersey Shore Medical Center was paid the sum of $576.00. This letter dated August 9, 1973 is marked Exhibit "4" and is attached hereto.

WHEREFORE, I respectfully request that the Motion to Dismiss the complaint for lack of federal jurisdiction be denied.

Dorothea Donohue

DOROTHEA DONOHUE

Sworn to before me this
18th day of November 1975

William J. Corcoran

WILLIAM J. CORCORAN
Notary Public, State of New York
No. 31-5817065
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT 1, ANNEXED TO AFFIDAVIT OF DOROTHEA DONOHUE.

Hi. Dorothea

To continue our conversation from the last time we spoke I've already told the Rental Agent that you would be willing to take over my apartment & if I could take a smaller one — They were very agreeable. So whenever you are ready the Apt. is ready.

Really dear after all your disappointing visits & phone calls to Real Estate Agents I think this is your best bet — As you know its a large 2 Bedroom Apt. & close proximity with both Cathedral & public schools & for $210 a month you can't do better anywhere!!

Maybe David can still visit the Dr. when necessary — it's only an hour or so from here by bus & you would have all the expenses

EXHIBIT 1, ANNEXED TO AFFIDAVIT OF DOROTHEA DONOHUE

2

of taking cabs back & forth -- I know how difficult it's been for you financially & I think you could do so very much better here.

Please write & let me know how you feel about it. Hugs & Give my love to the kids.

Fran

P.S. Spoke to another Real Estate man you had called & the best they had was a 1 Bedroom on E 89th for $285 plus 2 months security — Please stop wasting your money on phone calls & call those Agencies & take this apartment you can't do better.

See You Soon!!

(Forgive Paper -- Writing this @ Work)

EXHIBIT 2, ANNEXED TO AFFIDAVIT OF DOROTHEA DONOHUE.

STATEMENT

JOSEPH E. JASAITIS, M. D.

PLASTIC AND RECONSTRUCTIVE SURGERY COSMETIC AND SURGERY OF THE HAND

206 Crescent Pkwy.
Sea Girt, N.J. 08750
Tel. 775-7164

2100 Corlies Ave.
Neptune City, N.J. 07753
Tel. 775-7164

252 Broad St.
Red Bank, N.J. 07701
Tel. 741-8188

Mr. William Donahue
120 W. 91st St.
New York City, New York

212-799-5510

Operating Eng. Local 15

NUMBER	DATE	DESCRIPTION	CHARGE	PAYMENT	CURRENT BALANCE
		for daughter, Dawn, age 8			
	7/29/73	ER- JSMC -Adm. Surg.	750-	-	750-
	8/3/73	O.V.	-	-	750-
	8/21/73	JSMC - ~~anes~~ surg. cast charge	-	cancelled	
	8/28/73	cast charge - JSMC	15-	-	765-
	8/30/73	bill to father	-	-	765-

FORM NO. 99-8585

PLEASE PAY LAST AMOUNT IN THIS COLUMN ◀

BI - Biopsy
CF - Consultation Fee
CA - Cast
DC - Dressing Change
DG - Drugs
ER - Emergency Room
HC - Hospital Consultation
HV - Hospital Visit
LAB - Laboratory
NC - No Charge
OC - Office Call
OS - Office Surgery
ROA - Rec'd. on Account
RP - Report
S - Surgery
SP - Splint
SS - Statement Sent
PH - Photography
SR - Suture Removal

EXHIBIT 3, ANNEXED TO AFFIDAVIT OF DOROTHEA DONOHUE.

EMPLOYEE NAME	CERTIF. NUM	AGE	DEPENDENT (IF APPLIC.)	SEX	RELATIONSHIP	AGE
[illegible] WILLIAM	35[illegible]8		DAWN		CHILD	

1315 / 260

HOSPITAL ROOM AND BOARD			HOSP MISC.	SURGICAL	MEDICAL EXP.	X-RAY LAB.
DAYS	DAY RATE	AMOUNT				
				$112.50		

NO. 045903

LOSS OF TIME						OTHER BENEFITS
FROM	TO	ELIM DA	WEEKS	WEEK RATE	AMOUNT	
						MM $442.00

NATIONAL BANK OF NORTH AMERICA
116 FIFTH AVENUE, NEW YORK, N. Y.

PAY $554.50

12/24/73 DATE ISSUED

PAY $554.50
TO ORDER OF
JOSEPH E. JASAITIS, M.D.
2100 CORLIES AVE.
NEPTUNE CITY, N.J. 07753

WELFARE BENEFIT ACCOUNT
JOINT WELFARE FUND ENGINEERS LOCALS 14 & 15
265 WEST 14th STREET, N. Y., N. Y.

[illegible] AUTHORIZED SIGNATURE

[illegible]

5

⑈045903⑈ ⑆0260⑈0315⑆ 001 1⑈7455⑈

EXHIBIT 1, ANNEXED TO AFFIDAVIT OF DOROTHEA DONOHUE.

JOINT WELFARE FUND

OF THE

International Union of Operating Engineers

LOCAL UNIONS 14, 14B, 15, 15A, 15C, 15D, A.F.L. - C.I.O.

265 WEST 14th STREET - NEW YORK, N.Y. 10011
5th FLOOR Tel. ALgonquin 5-7657

Employer Trustees:

WILLIAM C. FINNERAN, JR.
ALFRED G. GEROSA

JOSEPH J. SALCITO
Administrator

Union Trustees:

THOMAS A. MAGUIRE
THOMAS J. NOLAN

August 9, 1973

Dear Sir and Brother:

We have today submitted a check in the amount of $576.00 To Jersey Shore Med. Center for your dtr. Dawn.

The total bill submitted by Hosp was in the amount of 576.00

Very truly yours,

Union Trustees:	**Employer Trustees:**
THOMAS A. MAGUIRE	WILLIAM C. FINNERAN, JR.
THOMAS J. NOLAN	ALFRED G. GEROSA

AFFIDAVIT OF WILLIAM J. CORCORAN IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWN DONOHUE, an infant, by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,	Index No. 75 Civ.1023 (M.P.)
Plaintiffs,	AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS
-against-	
ALB ERT RAPELLA,	
Defendant	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. CORCORAN, being duly sworn, deposes and says:

1. I am a member of the firm of CORCORAN AND BRADY, Attorneys for the Plaintiffs in the above entitled case and am familiar with the facts herein. This affidavit is being submitted in opposition to the Motion of the Defendant to dismiss the complaint on the ground that there is no federal diversity of citizenship.

2. The action is one to recover damages to the left hand and wrist of the infant plaintiff, DAWN DONOHUE, who was age 8 at the time of the occurrence, and to recover damages for the Mother, DOROTHEA DONOHUE, for loss of services, medical expenses, hospital expenses and the particular damage

suffered by DOROTHEA DONOHUE as mother of the infant plaintiff in caring for her during a difficult period which followed the child's medical and surgical treatments and repairs.

3. The presence of the Plaintiffs in the State of New Jersey on the day of the occurrence was occasioned by a visit of Mrs. Donohue and her daughters, DAWN and PATRICIA, to the married daughter and son-in-law of Mrs. Donohue, namely, Mrs. Katherine Horgan and her husband, John, at 319 McCabe Avenue, Bradley Beach, New Jersey. The Horgans were summer residents at this summer resort and Mrs. Donohue and her infant daughter Dawn came down from New York City on July 29, 1973 solely for a visit. On the afternoon of this day at about 2 or 2:30 PM, DAWN, while playing with her older sister Patricia, met with this accident. DAWN was on the open porch of the cottage and her sister Patricia was inside of the house, attempting to open the door, leading out to the porch. DAWN was facing Patricia. Patricia was having trouble with the door catch of the door which had a defective lock which failed to open when the knob was turned. Suddenly, the large piece of glass which covered the upper part of the door fell and broke from its enclosure causing large shards of pointed glass in triangular and other forms, to be thrown at DAWN who was standing on the outside porch, with her hands outstretched, facing PATRICIA. Some of these

large sections of thin glass, acting like a knife cut deeply into the left wrist and hand of the infant DAWN, resulting in a multiple severance of the nerves and tendons of the left wrist and left hand. The child lost a great deal of blood and was removed by ambulance to the Jersey Shore Hospital in Neptune, New Jersey.

Fortunately, at the time of her admission, there was present a celebrated surgeon by the name of DR. JOSEPH E. JASAITIS with offices at 206 Crescent Parkway, Sea Girt, New Jersey. Dr. Jasaitis who is a Diplomate of the American Board of Plastic Surgery specializes as his stationery indicates solely in "Plastic and reconstructive-cosmetic of the Hand-Head and Neck Cancer Surgery".

4. Dr. Jasaitis found that DAWN suffered a deep irregular wound to her deminant left wrist. She was seen in the Emergency Room after having eaten a full dinner and bezause of this, repair of the hand was deferred until midnight of the same day. It was found that the Ulnar half of the medican nerve was transected; the entire ulnar nerve was transected, the flexor digitorum superficialis tendons were totally transected, except for the tendon to the index finger which was partially transsected; the flexor digiterum profundus tendons to the middle ring and little fingers were completely transsected, and there was extensive hematoma formation

throughout the sheath. Upon completion, a circular cast was applied. The operation was over 2-1/2 hours in duration during which the infant child was under general anesthesia.

The infant Plaintiff was discharged on July 31, 1973 for follow-up in the office of Dr. Jasaitis. The severance of the nerves and tendons caused the infant plaintiff to develope a "claw-like" hand and DAWN was unable to close her hand or make a fist. Mrs. Donohue was advised that it would be necessary to come to Dr. Jasaitis frequently for follow-up treatments and therapy. Portions of the hospital chart of Jersey Shore Hospital are attached hereto and marked Exhibit "A". The purpose of having the Court view these portions of the chart is to show the serious permanent injury which the child suffered and which required the decision of her mother to remain in New Jersey to take advantage of the services of this excellent surgeon who happened to specialize in the very type of repair which DAWN needed if she was ever going to make any reasonable recovery from this terrible trauma which affected DAWN mentally and emotionally as well as physically.

Being naturally left handed, her suffering and trauma were aggravated by being compelled to attempt to write with her right hand after many months receiving therapy from Dr. Jasaitis. The reports of Dr. Jasaitis show that

he saw DAWN in the early months frequently, sometimes once a week, sometimes twice in one week and thereafter, once every two weeks. She is still under the care of Dr. Jasaitis and further operative repair is contemplated to remove a large portion of tissue in the wrist where pain continues to the present time and is most severe.

5. If the accident had not occurred and if the need for the services of a celebrated plastic surgeon, specializing in the care, treatment and repair of the hand was not available, the infant plaintiff, without doubt would have returned to their home in Manhattan along with her mother, sister Patricia and their father, William Donohue. Proof that Mrs. Donohue and her children Dawn and Patricia and their father William Donohue continued their New York domicile is the fact that the admission notes on the hospital chart of Jersey Shore Hospital at Neptune, New Jersey show that the father, WILLIAM DONOHUE, resides at

> 120 West 91st Street, New York City
> and is a member of Local 15 Operating
> Engineers in New York City.

A copy of the Hospital Chart is annexed hereto and marked Exhibit "A". This hospital chart shows the nature and extent of the severe injury which necessitated her continued presence in New Jersey to be in close proximity to the treating surgeon, Dr. Jasaitis.

Further proof that the Plaintiffs, Mrs. Dorothea Donohue and her infant daughter, DAWN, were and continued to remain as New York City residents is the fact that following the accident to DAWN on July 29, 1973, the mother and daughter, namely, the Plaintiff DOROTHEA DONOHUE and DAWN DONOHUE and the other daughter, PATRICIA returned to their home at 120 West 91st Street in Manhattan; the family continued to remain as tenants of these premises known as the STEPHEN WISE TOWERS, and owned by the New York City Housing Authority through the months of November 1973. A copy of the demand for payment of the rent for these premises on the stationery of the landlord, New York City Housing Authority for the period of 8/1/73 to 11/14/73 for a total of $475.99 is attached hereto and marked Exhibit "B".

6. The history of the DONOHUE family indicates that they have always resided in New York and more particularly in the Borough of Manhattan, as follows:

(a) resided at 120 West 91st Street in the Borough of Manhattan, for a period of 8 years as of the time of the accident to DAWN on July 29, 1973;

(b) previously resided at 170 West 89th Street for a period of 10 years;

(c) on the onset of the accident on July 29, 1973, the mother and daughter, the Plaintiffs in the action, along with Patricia returned to their home at 120 West 91st Street, Manhattan; it was only the need to be near Dr. Jasaitis and the Jersey Shore Hospital where the child was operated upon that prompted the mother and daughter to take up temporary abode in New Jersey.

(d) the Father of DAWN is a member of Local 15, International Union of Operating Engineers, located at 265 West 14th Street, New York City and was originally initiated into that Local Union in January 14, 1954. He remained an active member of Local 15 until he retired because of ill health in October 1973 and is now receiving Pension Benefits from this New York City Pension Fund. Mr. Donohue worked with construction companies in New York City for a period of over 20 years.

(e) At the time of the accident to DAWN, the father, William Donohue, was employed as an operating engineer for one of the largest contractors in the country by the name of Kewitt Morrison on a job in Staten Island, New York. His initiation into Local 15 of the International Union of Operating Engineers occurred on January 14, 1954, when he resided at 44-15 43rd Avenue, Long Island City. Mr. Donohue never left Local 15 in New York City and worked out of its jurisdiction which is the five Boroughs of the City of New York until he retired in October 1973.

(f) prior to the accident on July 29, 1973, the daughter PATRICIA was a student at St. Gregory's Parochial School, West 90th Street, Manhattan; Mr. and Mrs. Donohue continued to remain in their West 91st Street address throughout November 1973 except for frequent visits to Dr. Jasaitis at his office in New Jersey.

(g) the infant Plaintiff DAWN at the time of her accident was a student at Public School 84, 48 West 90th Street, Manhattan, where she finished the first and second grades as there was no room for her at St. Gregory's; Mr. Donohue, prior to the Manhattan addresses, resided with this family at Astoria, Queens, New York City; prior to this in the early years of their marriage, Mr. and Mrs. Donohue resided in Liberty, New York, in Sullivan County for two years; prior to this address the Donohue family resided in Margaretville, New York; Mrs. Donohue and Dawn never lived outside of New York City or State.

(f) the married daughter of Mrs. Donohue, Mrs. Katherine Horgan and her husband resided at West 108th Street, Manhattan, City of New York, and prior to her marriage, Katherine Horgan, nee Donohue, graduated from St. Gregory's Parochial School in West 90th Street, Manhattan.

(h) The medical and surgical bills were paid to the full extent of the permissible schedule by the Joint Welfare Fund of the International Union of Operating Engineers, Locals 14-15, 265 West 14th Street, New York, to the doctors and hospital which treated and serviced the condition of DAWN as a dependent of her father, WILLIAM DONOHUE, a member of Local 15. These bills and services were rendered by the Welfare Fund long after the accident of July 29, 1973 occurred; the Joint Welfare Fund paid Dr. Jasaitis $765; Jersey Shore Hospital $576 with more bills still due.

(i) The parents of Mr. John Horgan, son-in-law of Mrs. Donohue reside in Doughlas House on Amsterdam Avenue and West 104th Street, Manhattan in the City of New York.

(j) Mr. Margaret Donohue, the mother of Mr. Donohue, father of Dawn, resided at 8435 62nd Drive, Middle Village, Queens, New York up until her death and burial on September 9, 1975.

(k) The address on the Police Blotter report of the Police Department of Bradley Beach, New Jersey, gives the address of the infant Plaintiff, DAWN as 120 West 91st Street, New York City, Apartment #19. A copy of this Police Report is attached hereto and marked Exhibit "C".

(l) A copy of the rent receipt book issued by the New York City Housing Authority to Mr. William Donohue of 120 West 91st Street, New York City, Acct. No. 1-19J,

indicates that rents were paid after the accident of July 29, 1973, for August 24, 1973. A copy of this receipt book is attached hereto and marked Exhibit "D".

The cast on DAWN's arm and wrist was removed by Dr. Jasaitis on August 29, 1973 and he continued to see and treat DAWN with therapy for many months later up until the present when another operation is contemplated.

ALL OF THE ABOVE DEMONSTRATES A LIFE STYLE THAT IS STRICTLY IN THE BOROUGH OF MANHATTAN, PARTICULARLY THE WEST SIDE IN THE VICINITY OF AMSTERDAM AVENUE AND WEST 90TH STREET, WHICH WAS AND IS KNOWN AS THE neighborhood of St. Gregory's where a notable church and parochial school is located and from which graduated many of the important personages in the field of politics, law, education and the church. It was to remain a part of this neighborhood that the plaintiffs DOROTHEA DONOHUE and her daughter DAWN continuously and always aspired as evidence by the attempts of Mrs. Donohue to relocate in that neighborhood and failing that, to go to the Borough of Queens, where Mrs. Donohue's sister resides and where Mr. Donohue's mother resided up until her death and burial on September 9, 1975.

THE CONTINUING INTENT OF MRS. DONOHUE TO REGARD NEW YORK CITY, AND MORE PARTICULARLY THE BOROUGH OF MANHATTAN AND THE BOROUGH OF QUEENS AS HER HOME.

Despite the fact that the physical residence of Mrs. Donohue and her daughter Dawn is New Jersey, this is so because of the necessity to be in close proximity to Dr. Jasaitis and theJersey Shore Hospital. The injury suffered by DAWN was no small trauma in the life of a young child. It was catastrophic, for its effects resulted in a complete undoing of the child's inner self. She was found wandering in the streets by police officers instead of attendance at school in New Jersey where she was the "butt" of her classmates' ridicule who teased her about the claw-like hand that she suffered with for many months. The constant therapy established by Dr. Jasaitis with the crunching of rubber balls and sponges has done wonders in bringing around some measure of recovery. The emotional problems that the child and her mother has had to bear required the attention of the school authorities and doctors. Rather than break this connection which has become beneficial for the child's recovery, Mrs. Donohue continued to remain in New Jersey on a temporary basis, with the continuous intent to return to New York when Dr. Jasaitis performed the operation that he is contemplating to bring about a further measure of improvement

in the movement of thechild's hand and wrist. Needless to say this deformity has shaken the entire body and soul of this infant child. The wrist and hand continue to remain deformed with a large protusion of tissue which Dr. Jasaitis plans to remove in the next operative procedure. It was to have DAWN benefit from the services of this highly competent and dedicated surgeon, specializing as luck would have it, in the very field of hand surgery that her particular injury required, that prompted the move to remain in New Jersey temporarily.

Outside this summer visit to Bradley Beach, the Plaintiffs DOROTHEA DONOHUE and DAWN DONOHUE,, and the husband and father, WILLIAM DONOHUE, had no relationship to New Jersey. They never lived there before the accident to DAWN on July 29, 1973. The sojurn of the married daughter Catherine Horgan was that of a summer visitor.

The continuous intent on the part of Mrs. Donohue to return to New York City to resume residence in her old neighborhood of West 90th Street in the parish of St. Gregory has never wavered and this intent has been manifested by her inquiries from old friends. As a matter of fact, the witness, Mrs. Touci, who lived in the first floor of the premises at 319 McCabe Avenue, Bradley Beach, New Hersey, where the accident occurred, now resides in Manhattan near Mrs.

Donohue's former residences were located and Mrs. Donohue has been in communication with her to the present. Mrs. Donohue has also expressed an interest in living in Queens County where her sister-in-law lives and as a matter of fact is considering the offer of this sister-in-law, Frances Donohue to take over her apartment as the same is too large for her. Going back to Queens County would also be returning to the County where her husband's mother resided for many years up until her death in September 1975.

For all of the reasons aforesaid, the Motion to Dismiss for lack of Diversity should be denied. The mere accidental misfortune of a child's accident and the need to be near the attending specialist, which had its onset with an intentional brief visit to the married daughter of Mrs. Donohue at a summer vacation spot does not outweigh the intent to return to New York City where the Donohue family lived since their marriage and brought up their children in the Parish of St. Gregory's Church and parochial school where most of the children attended with the exception of DAWN who attended the nearby public school as the parochial school did not have room for her.

Cogent proof that Mrs. Donohue planned to return to New York City is set forth in an unsolicited letter postmarked March 5, 1975, copy of which is attached and marked Exhibit "E". In this letter Mrs. Donohue mentions that the reason she must continue to reside temporarily in New Jersey is because of the possibility of another operation on Dawn's hand. Mrs. Donohue speaks of living in New York City near "a good parochial school".

From a strick evidentiary point of view this letter is completely probative of Mrs. Donohue's intention to return to New York City inasmuch as it was mailed and postmarked March 5, 1975, long before the present motion was made and prior to the service of the Complaint on the Defendant on March 6, 1975 by the United States Marshall.

The long history of domicile in the Borough of Manhattan and the continuing intention of resuming domicile in New York City as demonstrated by the many objective signals in support of such intention satisfies the conclusion that Mrs. Donohue and her daughter Dawn never gave up New York City as their place of domicile. The life style of the family all points to Manhattan's West side as their abode notwithstanding their temporary stay in New Jersey for the practical reasons of being close to Dr. Jaisatis and the continuing care and treatment to be received from this compassionate and dedicated surgeon.

WHEREFORE, it is prayed that the Motion to Dismiss for lack of Federal Diversity Jurisdiction be denied and for such other relief as may be just in the premises.

William J. Corcoran

WILLIAM J. CORCORAN

Sworn to before me this

18th day of November 1975

Robert D. Brady

NOTARY PUBLIC

ROBERT D. BRADY
Notary Public, State of New York
No. 60-5419397
Qualified in Westchester County
Commission Expires March 30, 1976

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

DONAHUE, MISS DAWN — PATIENT PERMANENT ADDRESS
120 W. 91ST. ST, NYC.
PATIENT OCCUPATION - EMPLOYER & ADDRESS
CHILD
IN CASE OF EMERGENCY NOTIFY
DOROTHEA-MOTHER WILLIAM-FATHER
ABOVES RELATIONSHIP - PERMANENT ADDRESS 319 MC CABE AVE, BRADLEY BCH.
SAME (DAUGH.-MRS. CATHY HORGAN
GUARANTOR OCCUPATION - EMPLOYER & ADDRESS — EMP #
OPERATING ENGINEER
EMERGENCY PHONE — RELATION — B.C. ☐ B.S. ☐ CONTRACT NUMBER 079
MEDICARE A ☐ B. ☐ MEDICAID ☐ OTHER INS. ☐ 079
OPERATING ENG. LOCAL 15
EMERGENCY XX ROUTINE — ADMITTING - DIAGNOSIS
SEVERED FLEXOR TENDON

SERVICE: S GEO. — SURG-O — P.S.C. 02
PATIENT PHONE: 212-799-5510 EMP.
PATIENT EMP. PHONE
GUARANTOR PHONE
PARISH PREFERENCE
REFERRING PHYSICIAN
INFORMATION BY: MOTHER
ADMITTED BY: FLYNN
AID DAYS
WING COM... ROOM BED: 15I E 106
DATE OF BIRTH: 3-5-65
MAIDEN NAME
PATIENT SOCIAL SECURITY
ATTENDING PHYSICIAN: DR. JASAITIS
IN RESIDENT: ACC RM
EFFECTIVE DATE
DISCH / EXPIRED: DATE 7-3-73 TIME 11
PREVIOUS ADMISSION: NO
ADMIT: 9:10P
PLACE OF BIRTH: NY
AGE 8 SEX F RACE W MARR. STAT
RELIGION: CATH. REL. CODE 02
DR. CODE 269
DATE ADMITTED: 7-29-73
GROUP NUM. TYPE
PREV. ADM. NAME
PATIENT NUMBER: 828165
MEDICAL RECORD #: 7840

CONDITION ON DISCHARGE. — RECOVERED — IMPROVED — UNIMPROVED — EXPIRED — AUTOPSY
PROGNOSIS: Good
PROBABLE PERIOD OF DISABILITY: 3 months

FINAL DIAGNOSIS
Dup. Laceration of (L) Wrist (Dominant)
Transection Ulnar Nerve
Transection Median Nerve
Transection Flexor Tendons
FDP II - V
FDS II - V

SUMMARY

INTERN — ATTENDING

I, the undersigned, who as the mother of patient, do hereby agree and give my consent for admission to the above named hospital under the care of Dr. ____, his associates, partners, assistants or designees. I further consent to any hospital care which includes routine laboratory, diagnostic, or medical/surgical treatment which my physician, his associates, partners, assistants or designees may deem necessary or advisable during my hospitalization including the administration of such anesthesia as may be considered necessary or desirable in the judgement of my physician, anesthesiologist, their associates, partners, assistants or designees for the performance of these treatments and tests.

I HAVE READ THIS FORM, AND IT HAS BEEN FULLY EXPLAINED TO ME, AND I CERTIFY THAT I UNDERSTAND ITS CONTENTS AND ACKNOWLEDGE THAT NO GUARANTEES HAVE BEEN MADE TO ME AS TO THE RESULTS OF TREATMENTS OR EXAMINATIONS DONE IN THE HOSPITAL.

WITNESS Alice L. Slyne — SIGNATURE X Mrs. Donohue — DATE 7-29-73

Exh "A"

JERSEY SHORE MEDICAL CENTER—FITKIN HOSPITAL—SUMMARY

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

JERSEY SHORE MEDICAL CENTER-FITKIN HOSPITAL

FINAL SUMMARY

NAME OF PATIENT:	DONAHUE, DAWN
HOSPITAL NUMBER:	82-8165
DATE OF ADMISSION:	7/29/73
DATE OF DISCHARGE:	7/31/73
CONDITION ON DISCHARGE	IMPROVED
PROGNOSIS:	GOOD
PROBABLE PERIOD OF DISABILITY:	THREE MONTHS
FINAL DIAGNOSIS:	DEEP LACERATION OF DOMINANT LEFT WRIST; COMPLETE TRANSSECTION OF ULNAR NERVE; HEMI-TRANSSECTION OF MEDIAN NERVE; LACERATIONS OF LONG FLEXOR TENDONS OF INDEX, MIDDLE, RING AND LITTLE FINGERS.

SUMMARY:

This 8 year old child fell on glass sustaining a deep irregular wound to her dominant left wrist. She was seen in the Emergency Room soon after having eaten a full dinner. Because of this, repair of the hand was deferred until midnight of that same day. Work-up included a complete blood count, urinalysis, X-rays of the right wrist, and forearm. These were all within normal limits. Surgery was performed and repair of the nerves and long flexor tendons were performed. A circular cast was applied at the termination of the operation. Post-operatively, the child was placed on Penicillin. She was discharged on July 31,1973 to be followed in the office.

DOCTOR'S SIGNATURE J. JASAITIS, MD.

scm; 10/5/73

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

Monahue Shawn 8/75 W/C 7/89 7B 197620 6
319 McCabe Ave 3/5/65 none
Bradley Beach N.J.
Sellers N.J.C.

CONSENT UPON ADMISSION TO EMERGENCY ROOM

1. I, knowing that ____ am (is) in need of emergency medical care and treatment, do hereby voluntarily consent that such emergency medical care and treatment be rendered by the Professional Association known as Physicians Emergency Service and its employees, assistants, and designees.
2. I am aware that emergency treatment is temporary and that immediate arrangements with another physician may have to be made for purposes of complete diagnosis and continuation of treatment, and I specifically acknowledge that no guarantees or representations have been made to me as to the result of examination or treatment in the Emergency Room.
3. I hereby personally guarantee payment of all charges for services rendered in the course of Emergency Room treatment.
4. This form has been fully explained to me and I certify that I understand its contents.

Patient's Signature ____ Other Signature X Mrs D. Donahue

Month ____ Day ____ Year 197 ____ Time ____ a.m. p.m.
Witness ____
Reason for lack of patient's signature: ☐ Patient is physically uncapable ☐ Patient is a minor ☐ Other

ER ☐ PCP ☐ ADM # 828165

William Monahue (no Wrist on person)
120 N. 27th Ave
Cely - Operating Engineers
Union Local #75 - N.J.C.
Mother to fill these Glass door
Lac. L. Wrist

CODE 22

8 P.M. 7:38 JUL 29 73

8 S.O.W. Lac (L) Wrist
deep laceration & involvement of flexor tendon.
should have plastic repair.
L. Arpdon
Resident Professional

DX X RAY (R) and (L) wrist — RESULTS neg

MED T.T. disc Qui
8-4-73 Demerol 25 mg IM

CONSULTANT

I UNDERSTAND INSTRUCTIONS GIVEN ME AND THE FOLLOWING HAS BEEN MADE KNOWN TO ME.
CONTACT ____ FOR FOLLOW UP CARE ____ ON 1/1
DATE ____ SIGNATURE X

JERSEY SHORE MEDICAL CENTER

SERVICE	CODE	CHARGES
ER	301-0000	
MED	301-0002	
SUPP	301-0003	
PHY. FEE	302-0000	
CR	301-0005	
X-RAY		
NM		
LAB		
HR		
EKG	430-0201	
EEG	431-0000	
INH RX	456-	
DIAL	446-0000	
PES	464-0303	
TOTAL		
AMT. PD.		
BAL.		

DRS. ORDERS 13 White
Demerol 25 mg
1 cc
T.T. 0.5 cc

22 7-7-73

The signing of my orders certifies that this treatment is a medical necessity.
PHYSICIAN'S SIGNATURE

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

7 28 73

JERSEY SHORE MEDICAL CENTER - FITKIN HOSPITAL

HISTORY & PHYSICAL

NAME [redacted] Age 8 Case No.

8 y.o. W ♀ — (R) hundred

C.C.: Lacing (R) wrist

P.I.: Approx 7 pm fell thru glass door.

ate bun sandwich and macaroni & cheese at approx 5 pm

P.H.: Illnesses: 0
Allergies: Bees, fungi, etc
Med's: 0 Blood:
Dy IV: 0
Abuse: 0
ROS: Negative

P.E.: Local: Approx 5-6 cm irregular lac of (R) wrist. Lac ? tendon, ROS ulnar ? sensory, eg sensation ? ulnar nerve.
HEENT: Tonsils 1+. Tender nodes up (R) upper ark
Lungs: clear
Card: RSR. No
Abd: Tender
Skin: Clear

Intern Attending Date: 7/29/73

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

JERSEY SHORE MEDICAL CENTER - FITKIN HOSPITAL

PEDIATRICS-PHYSICAL EXAMINATION

NAME _____ DATE _____

WEIGHT _____ HEIGHT _____ TEMPERATURE _____ RESPIRATION _____

GENERAL CONDITION: _____

COLOR white NUTRITION _____

SKIN OK

EXTREMITIES OK; deep laceration (L) wrist.

JOINTS OK

MUSCLES OK

SPINE OK

CEREBROSPINAL SYSTEM: Reflexes, etc. WNL

GLANDS OK

GENITALS OK

RECTUM _____

ABDOMEN: soft, no palpable masses

UMBILICUS OK

LIVER OK

SPLEEN OK

HEART: RSR

APEX BEAT LOCATION _____

ENLARGED? no

MURMURS none

TRANSMITTED _____

LUNGS: clear on auscultation

HEAD: normocephalic, atraumatic

FONTANEL _____

HAIR OK

EYES OK

EAR, Rt. OK

EAR, Lft. OK

NARES OK

MOUTH OK

TEETH OK

TONGUE OK

THROAT OK

MENTAL DEVELOPMENT WNL

SPECIAL _____

WORKING DIAGNOSIS AFTER PHYSICAL EXAMINATION Deep laceration of (L) wrist c involvement of flexor tendons

Form 30

SIGNATURE Dr. S. Mukherjee

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

JERSEY SHORE MEDICAL CENTER - FITKIN SPITAL

PEDIATRIC SERVICE

Room .....

Name [redacted] Address

Age: Years Months Weeks Days Color Nativity

Admitted Discharged Cured Imp. Unimp. Died Autopsy Yes No

Diagnosis

Attending Interne Dr. S. Milkes

Family History: Tuberculosis F. M. No Syphilis F. M. No

Mother: Pregnancies 5 Abortions

Children: Living 5 Well? yes

Dead Cause of Death

Previous Medical History: Born at 9 Mos. Labor normal Asphyxia yes

Birth Wt. 6 lbs 10 oz Wt. at 1 yr. Sat alone Walked Talked 1st Tooth

Breast Fed Mos. Breast & Bottle Mos. Bottle Mos. Did well?

Previous Diseases	Age	Severity	Complications
Convulsions No			
Otitis (Earache) No			
Tonsillitis (Sore Throat) yes	4	mild	none
Pneumonia No			
Colds: Frequent (Average) Rare			
Measles			
Whooping Cough			
Diphtheria			
Scarlet Fever No			
Rheumatism (Growing Pains) No			
Chorea No			
Stomach and Intestinal Disorders No			
Other Illness Allergic to animals, plants, foods.			

Present Condition: Appetite fair Sleep good

Stools: No. 1 Consistency normal Color normal Mucous

Curds Blood Undigested Food

Vomiting

Infant: Present Formula

Older Child: Milk? Cereals? Green Vegetables? Meats?

Eggs? Sweets? Tea or Coffee? Bread?

Duration of Present Illness 1 Days

Chief Complaints lacerations (L) wrist; went thru glass door.

Signatures: Interne Dr. S. Milkes Attending

FORM 31

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

JERSEY SHORE MEDICAL CENTER - FITKIN HOSPITAL

OPERATIVE RECORD

Case No. 82-8165

Name DONAHUE, DAWN Date 7/30/73

Dictated 7/30/73

Preop. Diag. DEEP LACERATION OF LEFT WRIST WITH HEMI-TRANSECTION OF MEDIAN NERVE, COMPLETE TRANSECTION OF ULNA NERVE, TRANSECTION OF LONG FLEXORS TO INDEX MIDDLE AND RING AND LITTLE FINGERS.

Postop. Diag. SAME

Operation DEBRIDMENT OF WOUND OF LEFT WRIST; EXPLORATION OF WOUND; NEURORRHAPHY OF MEDIAN AND ULNAR NERVES; TENORRHAPHY OF FLEXOR DIGITORUM SUPERFICIALIS OF INDEX, MIDDLE, RING AND LITTLE FINGERS; TENORRHAPHY OF MIDDLE, RING, AND LITTLE FINGER FLEXOR DIGITORUM PROFUNDUS TENDONS, APPLICATION OF CIRCULAR PLASTER CAST.

Surgeon DR. JASAITES Assistants

Anaesthetist DR. ZAKHARY Anaesthetic ENDOTRACHEAL, GENERAL

Operation Began Closed

PROCEDURE: This 8 year old white female fell through a glass door on the afternoon of July 29, 1973. She sustained a deep laceration of her dominant left wrist. She was seen in the Emergency Room soon after the injury and because the child had eaten prior to the injury, surgery was deferred until after 12:00 o'clock midnight. At the time of surgery, it was found that the ulnar half of the median nerve was transected; the entire ulnar nerve was transected, the flexor digitorum superficialis tendons were totally transected, except for the tendon to the index finger which was partially transsected, the flexor digitorum profundus tendons to the middle ring and little fingers were completely transsected, there was extensive hematoma formation throughout the sheath.

With the patient in the supine position with the left arm abducted under general anesthesia, the left upper extremity was thoroughly prepped with Phisohex and Saline and suitably draped. The ~~pneumatic~~ tourniquet was inflated to 200 mms of Mercury. The tourniquet was applied for one hour. With the hand thus prepared, an exposing incision was necessary and therefore an incision was made cephalad on the ulnar side of the wrist flap was then elevated to expose the involved structures. The hematoma was removed and the involved sheath was also excised. The tendons were located, then the ends were squared off, and the tendons were repaired with monofilament #4-0 Nylon sutures using mattress sutures in perpendicular directions to one another. With all of the tendons thus repaired, attention was directed towards the nerves. The nerves were repaired using #6-0 vascular silk .....

Signature of Surgeon

Form 130

ECM: 8/2/73

J. JASAITIS, M.D.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

DONAGUE, DAWN 82-8165

The wound was dressed with Furacin gauze, fluffs, Kling, Webril and then a circular cast with the wrist and fingers flexed. She tolerated the procedure well.

J. JASAITIS, M.D.

scm 8-2-73

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

Pltf

JERSEY SHORE MEDICAL CENTER - FITI I HOSPITAL

X-RAY DEPARTMENT

NAME DONOHUE DAWN DR. X-RAY #. 22757-73

STATION ACCIDENT ROOM ADMISSION No. 1976206 DATE 7/29/73

RIGHT WRIST: PA, lateral and oblique views.

There is no evidence of old or recent fracture, dislocation, periosteal injury, or other bone or joint abnormality.

IMPRESSION: Normal examination of the right wrist.

RIGHT FOREARM: AP and lateral views.

There is no evidence of old or recent fracture, dislocation, periosteal injury, or other bone or joint abnormality.

IMPRESSION: Normal examination of the right forearm.

EWL

dh Radiologist EDWARD LIEBERMAN, M.D.

CHART

EXHIBIT B, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

NEW YORK CITY HOUSING AUTHORITY
Stephen Wise Towers
124 West 91 Street
New York, N. Y. 10024

873-6385 Date November 14, 1974

William Donohue
120 West 91st Street - 19J
New York, N.Y. 10024

Dear Mr. Donohue

Our records indicate that you owe a balance of $ 384.22 in connection with your occupancy at premises 120 West 91st Street Apt. 19J at this project.

The following is an itemized account of the balance due:

Rent 8/1/73 — 11/14/73	$ 338.67
Retroactive Surcharge	
Maintenance and other charges	137.32
TOTAL	$ 475.99
Less	
Security Deposit	$ 65.00
Interest	26.77
TOTAL	$ 91.77
Total Balance Due	$ 384.22

If you have any questions about the amount owed, please contact Miss Counter at this office. Otherwise, we shall expect payment within five days of the receipt of this letter.

If payment is not made, the entire account will be referred for legal action for collection and you will have to pay the additional expenses involved.

Very truly youre,

B. Kramer
Manager

73/11

EXHIBIT C, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

Aid — 319 McCabe Ave.BB. — 3860

ATURE OF OFFENSE — LOCATION — REPORT NO.

Telephone Operator

REPORTED BY — ADDRESS — PHONE NO.

Ptl.Rosen — 7:18 P.M. — 7/29/73 — Ptl.Stewart,Ogel — Phone

D BY — TIME — DATE — ASSIGNED — HOW REPORTED

ther Stolen Property	Currency	Jewelry	Furs	Clothing	Auto	Bike	Misc.
scription of Vehicle	Make	Year	Model	Color	Serial No.	Type	State
ther Prop Recovered	Currency	Jewelry	Furs	Clothing	Auto	Bike	Misc.

ORIG COPY

MOUTH COUNTY MESSAGE NO. — STATE POLICE TELETYPE NO

ARKS:

Reports F.A.needed right away at above address child just went thru a glass window,Car 20 on call.Plectron & Horn activated.

Ptl.Rosen

Dawn Donoghue age 8,120 W.91st St.N.Y.C.Apt.# 19,went thru window & cut her right wrist very badly.Taken to the hospital.

Ptl.Stewart,Ogel

BRADLEY BEACH POLICE DEPARTMENT

EXHIBIT D, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

NEW YORK CITY HOUSING AUTHORITY

TENANT DONAHUE W ACCT. NO. (-19)

ADDRESS 120 W 21 ST

	DATE	EXPLANATION	ACCOUNT NO.	AMOUNT PAID	BALANCE
1	JUN 14	CASH [illegible]-J		$ * 57.50	* 57.50 *
2	JUN 27	CA-1 [illegible]-J		$ * 57.50	* .00
3	JUL 16	CASH [illegible]-J		$ * 60.00	* 55.00 *
4	AUG 24	CA-1 [illegible]-J		$ *115.00	* 55.00
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

TO TENANT: • YOU MUST BRING THIS RECEIPT BOOK WHEN MAKING PAYMENTS.

• YOUR RENT IS DUE ON THE 1ST (DAY OF WEEK) OF EACH MONTH.

NYCHA: 132.013 (Rev. 4-58) Receipt Book - NCR No. 42 — HOUSES 160

EXHIBIT E, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN.

Dear Mr Corcoran -

I was surprised when I recived this letter specifying the rent had not been paid. I naturally thought Bill had paid it - however at this point he can not remember so therefore I shall have to contact these people & investigate as well as make arrangements to take care of this. Bill when I am able to return to New York I will look for a place to live on East

EXHIBIT E, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

side of New York - near
a good parochial school
in a better section rather
than question that is
increasingly getting bad,
but because of Dawn's
reading DR's case
continued & the possibility
of another operation it's
compulsory to remain for
a little while longer.

The phone call was
definitely trickery - it
had to be someone other
than a representative
relative to jury duty.
Why that my daughter
Patricia answered but
she said she recalled
not saying her older
sister was married but I
don't feel this too

EXHIBIT E, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

important. It will be
hospitalized for a
couple weeks but
will keep in touch
meanwhile my daughter
Katherine's phone is
201-542-4144

Sincerely
Mrs. Corcoran

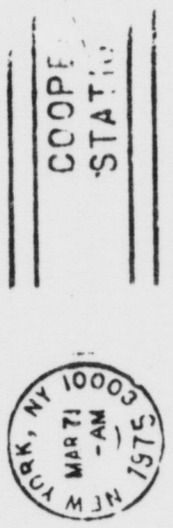
P.S.
my hospitalization is
relative to the food of
a GI series - rest of
the week of gaining
weight loss.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN

Mr. Bill Corcoran
11 Park Place
New York

C/O Corcoran & Brady

EXHIBIT E, ANNEXED TO AFFIDAVIT OF WILLIAM J. CORCORAN



William Dotson #[illegible]
PO Box 324
Elmira N.Y.

ORDER BY POLLACK, D. J. APPEALED FROM.

The parties were both resident in and citizens of New Jersey at the time of the commencement of this suit. Diversity jurisdiction is lacking and no federal question is involved. Complaint dismissed for lack of jurisdiction of this Court. The defendant has in open Court waived any defense of limitation and has consented to jurisdiction in New Jersey.

So Ordered.

s/MILTON POLLACK
U.S.D.J.

November 21, 1975

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWN DONOHUE, an infant, by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually,

Plaintiffs,

-against-

ALBERT RAPELLA,

Defendant

NOTICE OF APPEAL

75 Civ. 1023 (M.P.)

NOTICE is hereby given that DAWN DONOHUE, an infant, by DOROTHEA DONOHUE, her Mother and Natural Guardian, and DOROTHEA DONOHUE, individually, hereby appeal to the United States Court of Appeals for the Second Circuit from the final Memorandum decision and Order made on November 21, 1975 and filed on November 24, 1975, in the Office of the Clerk of this Court dismissing the Complaint on the ground that Diversity jurisdiction is lacking and no federal question is involved and the Plaintiffs appeal from each and every

part thereof.

Dated: New York, New York
December 9, 1975

CORCORAN AND BRADY
Attorneys for Plaintiffs
11 Park Place
New York, New York 10007
(Tel: (212) 227-2242

BY William J. Corcoran
WILLIAM J. CORCORAN
A Member of the Firm

TO:

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISRICT OF NEW YORK
FOLEY SQUARE
NEW YORK, N. Y. 10007

GARBARINI, SCHER, DeCICCO & BERARDINO, ESQS.
ATTORNEYS FOR DEFENDANT ALBERT RAPELLA
500 FIFTH AVENUE
NEW YORK, NEW YORK 10036
(Tel: (212) 695-6622)

375—Affidavit of Service The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

THE UNITED STATES COURT O F APPEALS

DONOHUE

VS

RAPELLA

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF N.Y. , ss:

AFRIM HASKAJ being duly sworn,

deposes and says that he is over the age of 18 years and resides at 1482 42nd street Broklyn

That on the 13th day of february, 1976 19 at

he served the annexed joint appendix and brief submitted fo plaintiffs-appellants upon Garbarini, Scher, DeCicco, & Berardino, att'y s for def-appellee, 500 Fith N.Y, N.Y. in this action, by delivering to and leaving with said attorneys two true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 13
day of february, 1976 19

Afrim Haskaj

Roland W. Johnson

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977